

Original Application

Eye Surgery Center of
Lenoir City

CN1807-033

CONFIDENTIAL

Eye Surgery Center of Lenoir City

CON APPLICATION

7/13/2018



State of Tennessee

Health Services and Development Agency

Andrew Jackson Building, 9th Floor, 502 Deaderick Street, Nashville, TN 37243
www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

CERTIFICATE OF NEED APPLICATION

SECTION A: APPLICANT PROFILE

1. Name of Facility, Agency, or Institution

Eye Surgery Center of Lenoir City

Name

5491 Creekwood Park Blvd.

Street or Route

Loudon

County

Lenoir City

City

TN

State

37772

Zip Code

Website address: N/A

Note: The facility's name and address **must be** the name and address of the project and **must be** consistent with the Publication of Intent.

2. Contact Person Available for Responses to Questions

Stephen H. Rudolph

Name

CPA

Title

Eyecare Resources, LLC

Company Name

shrudolphsr@yahoo.com

Email address

448 N. Cedar Bluff Rd-Ste 255

Street or Route

Knoxville

City

TN

State

37923-3612

Zip Code

Consultant

Association with Owner

901-219-0173

Phone Number

N/A

Fax Number

NOTE: **Section A** is intended to give the applicant an opportunity to describe the project. **Section B** addresses how the project relates to the criteria for a Certificate of Need by addressing: Need, Economic Feasibility, Contribution to the Orderly Development of Health Care, and Quality Measures.

Please answer all questions on 8½" X 11" white paper, clearly typed and spaced, single or double-sided, in order and sequentially numbered. In answering, please type the question and the response. All questions must be answered. If an item does not apply, please indicate "N/A" (not applicable). **Attach appropriate documentation as an Appendix at the end of the application and reference the applicable Item Number on the attachment, i.e., Attachment A.1, A.2, etc. The last page of the application should be a completed signed and notarized affidavit.**

3. SECTION A: EXECUTIVE SUMMARY

A. Overview

Please provide an overview not to exceed three pages in total explaining each numbered point.

- 1) Description – Address the establishment of a health care institution, initiation of health services, bed complement changes, and/or how this project relates to any other outstanding but unimplemented certificates of need held by the applicant;
- 2) Ownership structure;
- 3) Service area;
- 4) Existing similar service providers;
- 5) Project cost;
- 6) Funding;
- 7) Financial Feasibility including when the proposal will realize a positive financial margin; and
- 8) Staffing.

RESPONSE:

Description of Project- *The Applicant-Eye Surgery Center of Lenoir City, LLC is seeking approval to establish a new single specialty ambulatory surgical treatment center ("ASTC") in Loudon County, TN, for the purpose of performing ophthalmic surgical cases and related ophthalmic laser procedures. Initially, there will be two (2) Board certified ophthalmologists from Eye Care Centers, PLLC dba Tennessee Eye Care (TEC) that will be performing the eye surgery within the facility. The participating physicians are Tom Browning, MD, and Matthew Lowrance, DO. They will be performing ophthalmic surgery and laser procedures that do not require general anesthesia in the ASTC. The proposed ASTC site is located at 5491 Creekwood Park Blvd in Lenoir City, TN on a 2.1 acre parcel in Loudon County, TN. The proposed ASTC will be housed in the same Medical Office Building as the Tennessee Eye Care of Lenoir City medical eye care clinic. The proposed ambulatory surgery center will be approximately 3,889 square feet and will have two (2) operating rooms for performing the ophthalmic surgery and laser eye procedures. The Applicant is a new institution and the project does not include any major medical equipment or require bed complement changes and holds no other outstanding certificates of need.*

Ownership Structure- *The ASTC will be owned by Eye Surgery Center of Lenoir City, LLC (ESCLC)-Tennessee Limited Liability Company. The LLC will be managed by its member owners who will be performing the surgery in the Facility as well. The member owners and their relationship to the eye care medical practice- Eye Care Centers, PLLC dba Tennessee Eye Care (referred to as the "TEC group") and the ownership of the building and real estate located at the 5491 Creekwood Park Blvd, Lenoir City (Loudon County), TN 37772-DMT Properties, LLC are set forth in the chart below.*

OWNERSHIP STRUCTURE-ORGANIZATIONAL CHART

EYE CARE CENTERS, PLLC-dba Tennessee Eye Care (TEC)-Medical Practice
EYE SURGERY CENTER OF LENOIR CITY, LLC (ESCLC)-ASTC
DMT PROPERTIES, LLC (DMT)-Real Estate/Building Owner & Landlord

AFFILIATED MEDICAL PRACTICE ENTITY:

Eye Care Centers, PLLC
dba Tennessee Eye Care

Provider Owners:

Thomas A. Browning, MD-Member	25.00%
Matthew D. Lowrance, DO-Member	25.00%
Sylvia Mende-Caulfield, OD-Member	16.66%
David N. Montgomery, OD-Member	16.67%
John M. Hunt, OD-Member	16.67%
	<hr/>
	100.00%

Practice Locations:

Eye Care Centers, PLLC dba
Tennessee Eye Care of Harriman

1798 Roane State Hwy,
Harriman, TN 37748 (Roane Cty)

Eye Care Centers, PLLC dba
Tennessee Eye Care of Lenoir City

New Address-Opens Fall 2018
5491 Creekwood Park Blvd-Ste A
Lenoir City, TN 37772 (Loudon Cty)

Existing Address to Relocate in Fall 2018

149 Kelsey Ln
Ste #104
Lenoir City, TN 37772 (Loudon Cty)

Eye Care Centers, PLLC dba
Tennessee Eye Care of Knoxville

6354 Lonas Spring Drive
Knoxville, Tennessee 37909

Employed Providers:

Paul E. Wittke, MD
Heidi Herring, OD
Melissa Pfeffer, OD
Elissa Fleming, OD
Benjamin Herring, OD

PARTICIPATING OWNER & SURGEON IN ESCLC-ASTC:

Provider Owners:

Thomas A. Browning, MD-Member	50.00%
Matthew D. Lowrance, DO-Mgr.Mem.	50.00%
	<hr/>
	100.00%

Project Site Location:

Eye Surgery Center of Lenoir City, LLC
5491 Creekwood Park Blvd-Ste B
Lenoir City, TN 37772 (Loudon Cty)

PARTICIPATING Real Estate/Bldg Owners & Landlord

OWNERSHIP %

Provider Owners:

David N. Montgomery, OD-Chief Mgr	33.34%
Thomas A. Browning, MD-Member	33.33%
Matthew D. Lowrance, DO-Member	33.33%
	<hr/>
	100.00%

DMT Properties, LLC

149 Kelsey Ln
Ste #104
Lenoir City, TN 37772 (Loudon Cty)

Project Site Location:

5491 Creekwood Park Blvd
Lenoir City, TN 37772 (Loudon Cty)

Service Area- The Primary Service Area for this project includes two counties in Tennessee- Loudon and Roane County where the TEC group has two of its three well established medical office locations in Lenoir City and Harriman. The ASTC proposed site is ideally located in Loudon County- Lenoir City and will be housed within the same building alongside the newly constructed Tennessee Eye Care of Lenoir City medical clinic which will plans to be open in fall 2018 The proposed ASTC site is conveniently located less than 20 miles (approx.. 21 minutes) from the affiliated TEC-Harriman office location. The development of this ASTC will provide a convenient quality eye surgery facility for patients referred from the TEC group practice covering this growing market. The two ophthalmic surgeons- Drs, Browning and Lowrance are also participating member owners in the recently licensed and certified single specialty ophthalmic ASTC- Eye Surgery Center of Knoxville, LLC located in Powell, TN- Knox County. The TEC-Knoxville practice location can now schedule and refer patient residing in Knox county and the Greater Knoxville area to this convenient facility. Based on utilization of ambulatory surgical and hospital outpatient services provided by the TEC group physicians in 2017 over 64% of the patients served originated from the Loudon and Roane county primary Service Area. None of the current surgical volume of patients seen by the TEC group in the Knox county area are included in the statistics for this application.

Existing similar service providers- The TEC physicians currently perform the eye surgeries for patients residing in the primary service area in the two Covenant Health -Hospital facilities located in Roane county- Roane Medical Center -Harriman and Ft. Loudoun Medical Center- Lenoir City in Loudon County. The Surgery Center of Athens in McMinn County ASTCs performs eye services in its multi-specialty ASTC and has two ORs and a Procedure room.

Project Cost- The Applicant will be building out shelled-in space at a new facility on Creekwood Park Blvd. in Loudon County, TN. The total build-out costs for the space are estimated at \$633,350 for the approximate 3,889 sq. ft. facility to be developed on the 2.1 acre site. Equipment Costs are estimated at \$500,000 and professional fees including architect, legal, engineering, consulting fees and CON fees are estimated to cost \$150,000. The total cost for the project is estimated to be \$1,283,350.

Funding- First Citizens Bank will provide 100% financing of the project's total capital cost funding requirements- \$1,283,350. The bank financing will provide funding through a permanent construction loan for the build-out construction, an equipment loan for \$500,000 with 84-month term, and a working line of credit for \$150,000 to fund the estimated start-up and organizational costs including all professional fees.

Financial Feasibility- The proposed Project will realize a profitable operating margin on an immediate basis once operations are initiated. The projected surgical case load is 1,968 in Year 1 and 2,165 in Year 2 of operation which will generate positive cash flow for the Project and net operating margins in excess of 27% in each of the first two years.

Staffing- The Medical Staff for the single specialty ophthalmic ASTC will initially consist of the two

Board Certified ophthalmologists (the “TEC group”) that will also serve as Member managers and physician owners of the project. The Applicant will consider extending surgical privileges for the ASTC to other qualified ophthalmic physicians once the appropriate physician credentialing and admission policy for surgical privileges has been established by the organization. The ASTC will require 5.4 FTES consisting of three Registered Nurses (RNs), two surgical technicians (part-time), and two administrative (non-patient care) positions. The ASTC intends to contract with other qualified Professional Staff to provide professional anesthesia care at the facility.

Rationale for Approval

A certificate of need can only be granted when a project is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of adequate and effective health care in the service area. This section should provide rationale for each criterion using the data and information points provided in Section B. of this application. Please summarize in one page or less each of the criteria:

- 9) Need;
- 10) Economic Feasibility;
- 11) Appropriate Quality Standards; and
- 12) Orderly Development to adequate and effective health care.

RESPONSE:

- 1) ***Need:** There are several critical factors to consider in addressing the current and future needs for providing health care and more specifically eye care. Presently and for the foreseeable future there will be more seniors (65+ age group) and fewer doctors. The growth rate in the number of ophthalmologists at present is flat or 1% which has already created some serious labor shortages and this shortage is expected to escalate over the next ten years. The baby boomer generation continues to move towards the elder age bracket and this combined with lengthening life expectancy are major indicators that a dramatic increase in patients with age-related eye diseases will occur over the next 10 to 30 years. According to recent reports and studies conducted by Prevent Blindness America, the leading causes of vision impairment and blindness in the U.S. are primarily age-related eye diseases including age-related macular degeneration, cataract, diabetic retinopathy, and glaucoma. Cataracts are the most common cause of preventable visual impairment and it is estimated that currently 22 million Americans over the age of 40 have a cataract and by age 80, half of all Americans have a cataract. Estimates suggest that by 2020 the prevalence of cataracts in the U.S. will increase to 30.1million and by 2032 to 38.5 million. There are currently about 9,000 cataract surgeons treating about 4 million cataracts per year. The demographics of Tennessee and the proposed project’s Service Area mirror the national aging trends of the population. The senior population (65+ age group) within the Service Area is expected to increase by 15.9% from 2016 to 2020.*

It will be of increasing importance to be financially efficient, cost-effective and maximize the ophthalmologists productivity in addressing the patient needs in this evolving healthcare environment. There is a growing need to move cataract surgery as well as other eye surgery from multi-specialty ASTCs and hospital settings to single specialty ophthalmic ASTCs where efficiency may be maximized. Ophthalmic ASTCs are able to concentrate on a smaller subset of procedures and gain efficiencies in equipment and technology, supply cost management, training of staff, and care of the patients in the preoperative and postoperative care area. One of the best ways to increase efficiency while addressing the growing needs for cataract and other eye surgery over the next decade will be to consolidate these ophthalmic cases within the Service Area into the Applicant's proposed single specialty ophthalmic ASTC.

The TEC group of ophthalmic surgeons currently perform their ophthalmic surgical cases and laser eye procedures within the Service Area in two different hospital locations and one multi-specialty ASTC. Some of the eye laser procedures are currently performed at their medical office. Both of these physicians provide eye care and perform surgery in rural hospitals beyond the Service Area. This proposed ASTC is intended to serve the Loudon & Roane County-based practice locations for the TEC group within the Service Area and the utilization, statistics, and projections in this application do not include these patients served beyond the Service Area. None of the existing ASTCs or hospital locations can address the total comprehensive eye care needs of the patients and ophthalmic surgeons within the TEC group.

There is a definitive need for additional surgical capacity in this Service Area since there are no existing ASTCs. The proposed project complies with State Guidelines and will not adversely affect the existing facilities.

The Applicant's goal is to increase the efficiency of the services that the TEC group of physicians can deliver by providing the entire scope of ophthalmic surgery and eye laser procedures to its patients at one convenient location in a quality care, cost-effective environment. HSDA approval of this ASTC development will enable this group to accomplish this goal and provide the latest technological advances in eye surgery to their patients.

2) Economic Feasibility: *The ASTC's projected surgical caseloads from the two ophthalmic surgeons in the TEC group for the first two years of operation -1968 Cases-YR 1 & 2,165 Cases-YR2 will generate significant positive cash flow for the Project. The net operating margin for the project is projected to exceed 27% in each year. The funding requirements for Applicant's total project cost of have been arranged through bank financing available from First Citizens Bank-Knoxville on favorable terms pending HSDA approval. The two Board Certified ophthalmologists-TEC group and their respective practices have continued to grow in patient volume and the surgical volume they generate will assure economic feasibility of the project. The single specialty ophthalmic ASTC facility can be developed at a reasonable cost and designed to achieve maximum operational efficiency and utilization at competitive charges. The accessibility and convenience of the facility for both physicians and their patients will also contribute to the project's success and overall economic feasibility.*

3) Appropriate Quality Standards: *Each of the two medical practices associated with the project have been successfully providing quality eye care services to patients in the Knoxville area for over twenty years. The two ophthalmic surgeons are all Board-certified and highly respected within the East Tennessee healthcare community for providing quality eye care and surgery - Tom Browning, MD, and Matthew Lowrance, DO. Dr. Tom Browning and Dr. Matthew Lowrance are fellowship trained as subspecialists in medical retina. The Applicant's group is committed to excellence and will seek accreditation from Accreditation Association of Ambulatory Health Care (AAAHHC) and will maintain the highest degree in standard of care for the patients they serve within the Facility.*

4) Orderly Development to adequate and effective health care: *No existing ASTCs exist in the service area. The surgical capacity of the existing ASTCs providing eye services in the area is*

currently inadequate to provide effective health care for the aging population and the associated high prevalence of age-related eye diseases. The best solution for addressing this issue is to provide additional surgical capacity through the approval of cost-effective single specialty ophthalmic ASTC facilities designed for both patient and physician convenience, accessibility, and efficiency. The approval of this project will allow the two ophthalmic surgeons within the TEC group to maximize their productivity and expand surgical capacity within the Service Area to a more appropriate level while addressing the growth in eye surgery required for this aging population.

B. Consent Calendar Justification

If Consent Calendar is requested, please provide the rationale for an expedited review.

A request for Consent Calendar must be in the form of a written communication to the Agency's Executive Director at the time the application is filed.

RESPONSE: *Not Applicable-N/A*

4. SECTION A: PROJECT DETAILS

Owner of the Facility, Agency or Institution

A. Eye Surgery Center of Lenoir City, LLC

865-988-6649

Name

Phone Number

149 Kelsey Lane, Ste 104

Street or Route

County

Lenoir City

TN

37772

City

State

Zip Code

B. Type of Ownership of Control (Check One)

A. Sole Proprietorship

F. Government (State of TN or
Political Subdivision)

B. Partnership

G. Joint Venture

C. Limited Partnership

H. Limited Liability Company

D. Corporation (For Profit)

I. Other (Specify)

E. Corporation (Not-for-
Profit)

Attach a copy of the partnership agreement, or corporate charter and certificate of corporate existence. Please provide documentation of the active status of the entity from the Tennessee Secretary of State's web-site at <https://tnbear.tn.gov/ECommerce/FilingSearch.aspx>. **Attachment Section A-4A.**

Describe the existing or proposed ownership structure of the applicant, including an ownership structure organizational chart. Explain the corporate structure and the manner in which all entities of the ownership structure relate to the applicant. As applicable, identify the members of the ownership entity and each member's percentage of ownership, for those members with 5% ownership (direct or indirect) interest.

RESPONSE: See Attachment Section A-4A.

5. Name of Management/Operating Entity (If Applicable)

Name

Street or Route

County

City

State

Zip Code

Website address: _____

For new facilities or existing facilities without a current management agreement, attach a copy of a draft management agreement that at least includes the anticipated scope of management services to be provided, the anticipated term of the agreement, and the anticipated management fee payment methodology and schedule. For facilities with existing management agreements, attach a copy of the fully executed final contract. Attachment Section A-5. **RESPONSE:** N/A

6A. Legal Interest in the Site of the Institution (Check One)

- | | | | |
|-------------------------|-------|--------------------|----------------|
| A. Ownership | _____ | D. Option to Lease | _____ <u>X</u> |
| B. Option to Purchase | _____ | E. Other (Specify) | _____ |
| C. Lease of _____ Years | _____ | | |

Check appropriate line above: For applicants or applicant's parent company/owner that currently own the building/land for the project location, attach a copy of the title/deed. For applicants or applicant's parent company/owner that currently lease the building/land for the project location, attach a copy of the fully executed lease agreement. For projects where the location of the project has not been secured, attach a fully executed document including Option to Purchase Agreement, Option to Lease Agreement, or other appropriate documentation. Option to Purchase Agreements **must include** anticipated purchase price. Lease/Option to Lease Agreements **must include** the actual/anticipated term of the agreement **and** actual/anticipated lease expense. The legal interests described herein **must be valid** on the date of the Agency's consideration of the certificate of need application.

6B. Attach a copy of the site's plot plan, floor plan, and if applicable, public transportation route to and from the site on an 8 1/2" x 11" sheet of white paper, single or double-sided. **DO NOT SUBMIT BLUEPRINTS**. Simple line drawings should be submitted and need not be drawn to scale.

- 1) Plot Plan **must include**:
 - a. Size of site (***in acres***);
 - b. Location of structure on the site;
 - c. Location of the proposed construction/renovation; and
 - d. Names of streets, roads or highway that cross or border the site.
- 2) Attach a floor plan drawing for the facility which includes legible labeling of patient care rooms (noting private or semi-private), ancillary areas, equipment areas, etc. On an 8 1/2 by 11 sheet of paper or as many as necessary to illustrate the floor plan.
- 3) Describe the relationship of the site to public transportation routes, if any, and to any highway or major road developments in the area. Describe the accessibility of the proposed site to patients/clients.

RESPONSE:

Attachment Section A-6A, 6B-1 a-d, 6B-2, 6B-3.

See Attachments A-6A, 6B-1 a-d, 6B-2, 6B-3.

RESPONSE: *The Project site has excellent accessibility for both the patients and the TEC group of physicians associated with the proposed ASTC. The location on Creekwood Park Blvd is less than 3 minutes from Interstate-75 Exit #81-TN Hwy 321 in Lenoir City, TN. The proximity to Interstate 75 and TN Hwy 321 enhances the access to major communities in the counties surrounding Loudon County including Roane County which is included in the Applicant's Primary Service Area. The Schedule below indicates the proximity of the ASTC site to the practice locations associated with the Project and Hospital locations within Loudon & Roane County.*

PROXIMITY OF PROJECT ASTC (CREEKWOOD PARK BLVD-LENOIR CITY, TN) TO ASTCS/HOSPITALS & PRACTICE LOCATIONS IN SERVICE AREA			Distance -	Drive Time-
ASTC	City (TN)	County (TN)	Miles	Minutes

Roane Medical Center Hospital

8045 Roane Medical Center Dr

Harriman, TN 37748 (Roane Cty)

Roane

20.2

23.0

Eye Care Centers, PLLC dba

Tennessee Eye Care of Harriman

1798 Roane State Hwy,

Harriman, TN 37748 (Roane Cty)

Roane

19.4

21.0

Eye Care Centers, PLLC dba

Tennessee Eye Care of Lenoir City

New Address-Opens Fall 2018

5491 Creekwood Park Blvd-Ste A

Lenoir City, TN 37772 (Loudon Cty)

Loudon

0.0

0.0

Existing Address to Relocate in Fall 2018

149 Kelsey Ln

Ste #104

Lenoir City, TN 37772 (Loudon Cty)

Loudon

1.6

4.0

Ft. Loudoun Medical Center-Hospital

550 Fort Loudoun Medical Center Dr

Lenoir City, TN 37772 (Loudon Cty)

Loudon

1.6

4.0

Eye Care Centers, PLLC dba

Tennessee Eye Care of Knoxville

6354 Lonas Spring Drive

Knoxville, Tennessee 37909

Knox

20.3

26.0

The Surgery Center of Athens

105 North Meadows Dr

Athens, TN 37303

McMinn

36.2

40.0

7. Type of Institution (Check as appropriate--more than one response may apply)

- | | |
|--|--|
| A. Hospital (Specify) _____ | H. Nursing Home _____ |
| B. Ambulatory Surgical Treatment Center (ASTC), Multi-Specialty _____ | I. Outpatient Diagnostic Center _____ |
| C. ASTC, Single Specialty <u>X</u> _____ | J. Rehabilitation Facility _____ |
| D. Home Health Agency _____ | K. Residential Hospice _____ |
| E. Hospice _____ | L. Nonresidential Substitution-Based Treatment Center for Opiate Addiction _____ |
| F. Mental Health Hospital _____ | M. Other (Specify) _____ |
| G. Intellectual Disability Institutional Habilitation Facility ICF/IID _____ | |

Check appropriate lines(s).

8. Purpose of Review (Check appropriate lines(s) – more than one response may apply)

- | | |
|---|--|
| A. New Institution <u>X</u> _____ | F. Change in Bed Complement _____
[Please note the type of change by underlining the appropriate response: Increase, Decrease, Designation, Distribution, Conversion, Relocation] |
| B. Modifying an ASTC with limitation still required per CON _____ | |
| C. Addition of MRI Unit _____ | |
| D. Pediatric MRI _____ | |
| E. Initiation of Health Care Service as defined in T.C.A. §68-11-1607(4) _____
(Specify) _____ | G. Satellite Emergency Dept. _____ |
| | H. Change of Location _____ |
| | I. Other (Specify) _____ |

9. Medicaid/TennCare, Medicare Participation

MCO Contracts [Check all that apply] ****To be applied for by Applicant

X AmeriGroup X United Healthcare Community Plan X BlueCare X TennCare Select

Medicare Provider Number To be applied for by Applicant _____

Medicaid Provider Number To be applied for by Applicant _____

Certification Type Ambulatory Surgery Center Treatment Center-Single Specialty _____

If a new facility, will certification be sought for Medicare and/or Medicaid/TennCare?

Medicare X Yes No N/A Medicaid/TennCare X Yes No N/A

10. **Bed Complement Data**

A. Please indicate current and proposed distribution and certification of facility beds.

RESPONSE: N/A

	<u>Current Licensed</u>	<u>Beds Staffed</u>	<u>Beds Proposed</u>	<u>*Beds Approved</u>	<u>**Beds Exempted</u>	<u>TOTAL Beds at Completion</u>
1) Medical						
2) Surgical						
3) ICU/CCU						
4) Obstetrical						
5) NICU						
6) Pediatric						
7) Adult Psychiatric						
8) Geriatric Psychiatric						
9) Child/Adolescent Psychiatric						
10) Rehabilitation						
11) Adult Chemical Dependency						
12) Child/Adolescent Chemical Dependency						
13) Long-Term Care Hospital						
14) Swing Beds						
15) Nursing Home – SNF (Medicare only)						
16) Nursing Home – NF (Medicaid only)						
17) Nursing Home – SNF/NF (dually certified Medicare/Medicaid)						
18) Nursing Home – Licensed (non-certified)						
19) ICF/IID						
20) Residential Hospice						
TOTAL						

*Beds approved but not yet in service


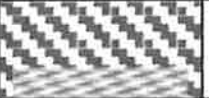
**Beds exempted under 10% per 3 year provision

B. Describe the reasons for change in bed allocations and describe the impact the bed change will have on the applicant facility's existing services. **Attachment Section A-10.** **RESPONSE:** N/A

C. Please identify all the applicant's outstanding Certificate of Need projects that have a licensed bed change component. If applicable, complete chart below. **RESPONSE:** N/A

<u>CON Number(s)</u>	<u>CON Expiration Date</u>	<u>Total Licensed Beds Approved</u>

11. Home Health Care Organizations – Home Health Agency, Hospice Agency (excluding Residential Hospice), identify the following by checking all that apply: RESPONSE: N/A

	Existing Licensed County	Parent Office County	Proposed Licensed County		Existing Licensed County	Parent Office County	Proposed Licensed County
Anderson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lauderdale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bedford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lawrence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Benton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lewis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bledsoe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lincoln	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blount	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Loudon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	McMinn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	McNairy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cannon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Macon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carroll	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Madison	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cheatham	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marshall	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chester	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Maurry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Claiborne	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Meigs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Monroe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cocke	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Montgomery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coffee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Moore	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crockett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Morgan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cumberland	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Obion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Davidson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Overton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decatur	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Perry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DeKalb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pickett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dickson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Polk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Putnam	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fayette	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rhea	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fentress	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Roane	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Franklin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Robertson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gibson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rutherford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Giles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Scott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grainger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sequatchie	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Greene	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sevier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grundy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Shelby	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hamblen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Smith	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hamilton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Stewart	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hancock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sullivan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardeman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sumner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tipton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hawkins	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trousdale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Haywood	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Unicoi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henderson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Van Buren	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hickman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Warren	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Houston	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Washington	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Humphreys	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wayne	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jackson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Weakley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jefferson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	White	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Johnson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Williamson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Knox	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

12. Square Footage and Cost Per Square Footage Chart

Unit/Department	Existing Location	Existing SF	Temporary Location	Proposed Final Location	Proposed Final Square Footage						
					Renovated	New	Total				
Eye Surgery Center of Lenoir City- ASTC (SS)	N/A	-0-		5491Creekwood Park Blvd-Ste B Lenoir City, TN	3,889		3,889				
Unit/Department GSF Sub-Total					3,889		3,889				
Other GSF Total											
Total GSF					3,889		3,889				
*Total Cost					\$583,350.00		\$583 350.00				
**Cost Per Square Foot					\$150.00		\$150.00				
**Note- Insufficient Data- Renovated Construction & New Construction not available for ASTCs-2015 to 2017 in Applicant Toolbox. Total Construction 1st Quartile-\$175.00/sq ft., Median-\$197.86/sq.ft, 3rd Quartile-\$250.50/sq ft for approved applications for Years 2015 to 2017-ASTCS. Total Cost/sq.ft is below 1st quartile For proposed project. Cost per Square Foot Is Within Which Range (For quartile ranges, please refer to the Applicant's Toolbox on www.tn.gov/hstda)					<input type="checkbox"/> Below 1 st Quartile	<input type="checkbox"/> Below 1 st Quartile	<input checked="" type="checkbox"/> Below 1 st Quartile				
					<input type="checkbox"/> Between 1 st and 2 nd Quartile	<input type="checkbox"/> Between 1 st and 2 nd Quartile	<input type="checkbox"/> Between 1 st and 2 nd Quartile				
					<input type="checkbox"/> Between 2 nd and 3 rd Quartile	<input type="checkbox"/> Between 2 nd and 3 rd Quartile	<input type="checkbox"/> Between 2 nd and 3 rd Quartile				
					<input type="checkbox"/> Above 3 rd Quartile	<input type="checkbox"/> Above 3 rd Quartile	<input type="checkbox"/> Above 3 rd Quartile				

* The Total Construction Cost should equal the Construction Cost reported on line A5 of the Project Cost Chart.

** Cost per Square Foot is the construction cost divided by the square feet. Please do not include contingency costs.

13. MRI, PET, and/or Linear Accelerator

1. Describe the acquisition of any Magnetic Resonance Imaging (MRI) scanner that is adding a MRI scanner in counties with population less than 250,000 or initiation of pediatric MRI in counties with population greater than 250,000 and/or
2. Describe the acquisition of any Positron Emission Tomographer (PET) or Linear Accelerator if initiating the service by responding to the following:

A. Complete the chart below for acquired equipment. **RESPONSE:** N/A

<input type="checkbox"/> Linear Accelerator	Mev _____ Types:	<input type="checkbox"/> SRS <input type="checkbox"/> IMRT <input type="checkbox"/> IGRT <input type="checkbox"/> Other _____
		<input type="checkbox"/> By Purchase
	Total Cost*: _____	<input type="checkbox"/> By Lease Expected Useful Life (yrs) _____
	<input type="checkbox"/> New <input type="checkbox"/> Refurbished	<input type="checkbox"/> If not new, how old? (yrs) _____
<input type="checkbox"/> MRI	Tesla: _____ Magnet:	<input type="checkbox"/> Breast <input type="checkbox"/> Extremity <input type="checkbox"/> Open <input type="checkbox"/> Short Bore <input type="checkbox"/> Other _____
		<input type="checkbox"/> By Purchase
	Total Cost*: _____	<input type="checkbox"/> By Lease Expected Useful Life (yrs) _____
	<input type="checkbox"/> New <input type="checkbox"/> Refurbished	<input type="checkbox"/> If not new, how old? (yrs) _____
<input type="checkbox"/> PET	<input type="checkbox"/> PET only <input type="checkbox"/> PET/CT <input type="checkbox"/> PET/MRI	
		<input type="checkbox"/> By Purchase
	Total Cost*: _____	<input type="checkbox"/> By Lease Expected Useful Life (yrs) _____
	<input type="checkbox"/> New <input type="checkbox"/> Refurbished	<input type="checkbox"/> If not new, how old? (yrs) _____

* As defined by Agency Rule 0720-9-.01(13)

- B. In the case of equipment purchase, include a quote and/or proposal from an equipment vendor. In the case of equipment lease, provide a draft lease or contract that at least includes the term of the lease and the anticipated lease payments along with the fair market value of the equipment.

RESPONSE: N/A

- C. Compare lease cost of the equipment to its fair market value. Note: Per Agency Rule, the higher cost must be identified in the project cost chart. **RESPONSE:** N/A

- D. Schedule of Operations: **RESPONSE:** N/A

Location	Days of Operation (Sunday through Saturday)	Hours of Operation (example: 8 am – 3 pm)
Fixed Site (Applicant)	_____	_____
Mobile Locations		
(Applicant)	_____	_____
(Name of Other Location)	_____	_____
(Name of Other Location)	_____	_____

- E. Identify the clinical applications to be provided that apply to the project. **RESPONSE:** N/A

- F. If the equipment has been approved by the FDA within the last five years provide documentation of the same. **RESPONSE:** *N/A*

SECTION B: GENERAL CRITERIA FOR CERTIFICATE OF NEED

In accordance with T.C.A. § 68-11-1609(b), "no Certificate of Need shall be granted unless the action proposed in the application for such Certificate is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of health care." Further standards for guidance are provided in the State Health Plan developed pursuant to T.C.A. § 68-11-1625.

The following questions are listed according to the four criteria: (1) Need, (2) Economic Feasibility, (3) Applicable Quality Standards, and (4) Contribution to the Orderly Development of Health Care. Please respond to each question and provide underlying assumptions, data sources, and methodologies when appropriate. Please type each question and its response on an 8 1/2" x 11" white paper, single-sided or double sided. All exhibits and tables must be attached to the end of the application in correct sequence identifying the question(s) to which they refer, unless specified otherwise. ***If a question does not apply to your project, indicate "Not Applicable (NA)."***

QUESTIONS

NEED

1. Provide a response to each criterion and standard in Certificate of Need Categories in the State Health Plan that are applicable to the proposed project. Criteria and standards can be obtained from the Tennessee Health Services and Development Agency or found on the Agency's website at <http://www.tn.gov/hsda/article/hsda-criteria-and-standards>.

Standards & Criteria-TN HSDA for CON Determination-ASTC:

Assumptions in Determination of Need- The need for an ambulatory surgical treatment center shall be based upon the following assumptions:

1. Operating Rooms-

- a. An operating room is available 250 days per year, 8 hours per day.
- b. The estimated average time per Case in an Operating Room is 65 minutes.
- c. The average time for clean-up and preparation between Operating Room Cases is 30 minutes.
- d. The optimum utilization of a dedicated, outpatient, general-purpose Operating Room is 70% of full capacity. $70\% \times 250 \text{ days/year} \times 8 \text{ hours/day} \div 95 \text{ minutes} = 884 \text{ Cases per year}$.

RESPONSE: *The proposed ophthalmic ASTC will be in operation 5 days per week, 8 hours per day, excluding national holidays which meets the criteria. The two operating rooms will be staffed for three days per week initially, which is more than adequate to accommodate the projected*

surgical caseload in Years 1 & 2. The estimated average time per Case in Operating Room for eye cases is well below 65 minutes. Based on industry average for ophthalmic surgery centers (Beckers ASC Review-Oct. 2013) the median case time for cataract surgery is 14 minutes. Cataract surgical cases are estimated to be 98.6% of the total procedures to be performed in the two dedicated operating rooms within the ASTC. Glaucoma and other eye surgical cases are estimated to have an average surgical case time of 30 minutes. The average clean-up and preparation for all eye cases in the operating rooms is estimated at 13 minutes (Median time reported in Current Ophthalmology-2015) well below the average time of 30 minutes set forth in the criteria. The Applicant projects 1,968 cases in Year 1 (984 cases/OR) and 2,165 cases in Year 2 (1,083cases/OR) to be performed in the dedicated outpatient operating rooms which is well over 100% capacity and exceeds the optimum utilization of 884 Cases per year.

2. Procedure Rooms-

- a. A procedure room is available 250 days per year, 8 hours per day.
- b. The estimated average time per outpatient Case in a procedure room is 30 minutes.
- c. The average time for clean-up and preparation between Procedure Room Cases is 15 minutes.
- d. The optimum utilization of a dedicated, outpatient, general-purpose outpatient Procedure Room is 70% of full capacity. $70\% \times 250 \text{ days/year} \times 8 \text{ hours/day} \div 45 \text{ minutes} = 1867 \text{ Cases per year}$.

RESPONSE: *.Not Applicable (N/A) -The Applicant does not intend to have a procedure room and will perform laser procedures in the Operating Room.*

Determination of Need-

1. Need. The minimum numbers of 884 Cases per Operating Room and 1867 Cases per Procedure Room are to be considered as baseline numbers for purposes of determining Need. An applicant should demonstrate the ability to perform a minimum of 884 Cases per Operating Room and/or 1867 Cases per Procedure Room per year, except that an applicant may provide information on its projected case types and its assumptions of estimated average time and clean up and preparation time per Case if this information differs significantly from the above-stated assumptions. It is recognized that an ASTC may provide a variety of services/Cases and that as a result the estimated average time and clean up and preparation time for such services/Cases may not meet the minimum numbers set forth herein. It is also recognized that an applicant applying for an ASTC Operating Room(s) may apply for a Procedure Room, although the anticipated utilization of that Procedure Room may not meet the base guidelines contained here. Specific reasoning and explanation for the inclusion in a CON application of such a Procedure Room must be provided. An applicant that desires to limit its Cases to a specific type or types should apply for a Specialty ASTC.

RESPONSE: *The Applicant will limit its cases in the proposed ASTC to ophthalmology and the project will include two operating rooms which will be utilized for ophthalmic surgical cases as well as ophthalmic laser procedures. Surgical Coordinators can effectively schedule these eye laser procedures to be performed by the specialists in the operating room at the end*

of a normal surgical day and therefore Applicant will not require a separate Procedure Room. These eye laser procedures are often the most cost effective treatment for certain vision modalities and do not generally require anesthesia and limited staffing. A procedure room will not be necessary in this ophthalmic ASTC since proper scheduling by the staff can accommodate these procedures

2. **Need and Economic Efficiencies.** An applicant must estimate the projected surgical hours to be utilized per year for two years based on the types of surgeries to be performed, including the preparation time between surgeries. Detailed support for estimates must be provided.

RESPONSE: *See the Case Utilization & Time Requirements Schedule for the proposed ESCLC project below.*

EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
CASE UTILIZATION & TIME REQUIREMENTS

<i>Type of Procedure:</i>	PROJECTED YR 1 Cases	AVE SX CASE TIME Min./Cs	AVE CLEAN-UP & PREP TIME Min./Cs	TOTAL Min./Cs	YR 1 MINUTES	YR 1 HOURS	Utilization % of Capacity*
Cataract Surgery	1,532	14	13	27	41,372	689.5	
Glaucoma Surgery	33	30	13	43	1,419	23.7	
Other Eye Care Surgery	8	30	13	43	331	5.5	
Subtotal	1,573	N/A	N/A	N/A	43,122	718.7	29.95%
Yag Laser Procedures	314	5	10	15	4,703	78.4	
Retina Laser Procedures	19	5	10	15	281	4.7	
SLT Laser Procedures	63	5	10	15	941	15.7	
Subtotal	395	N/A	N/A	N/A	5,924	98.7	4.11%
Total for 2 Ors	1,968	N/A	N/A	N/A	92,168	817.4	34.06%

<i>Type of Procedure:</i>	PROJECTED YR 2 Cases	AVE SX CASE TIME Min./Cs	AVE CLEAN-UP & PREP TIME Min./Cs	TOTAL Min./Cs	YR 2 MINUTES	YR 2 HOURS	Utilization % of Capacity*
Cataract Surgery	1,686	14	13	27	45,509	758.5	
Glaucoma Surgery	36	30	13	43	1,561	26.0	
Other Eye Care Surgery	8	30	13	43	364	6.1	
Subtotal	1,730	N/A	N/A	N/A	47,434	790.6	32.94%
Yag Laser Procedures	345	5	10	15	5,173	86.2	
Retina Laser Procedures	21	5	10	15	309	5.1	
SLT Laser Procedures	69	5	10	15	1,035	17.2	
Subtotal	434	N/A	N/A	N/A	6,516	108.6	4.52%
Total for 2 Ors	2,165	N/A	N/A	N/A	101,385	899.2	37.47%

*Utilization Capacity of Two Operating Rooms based on 2 ORs @ 3 days/wk x 8 hrs x 50 wks =2,400 hrs staffed/YR

- Need; Economic Efficiencies; Access.** To determine current utilization and need, an applicant should take into account both the availability and utilization of either: a) all existing outpatient Operating Rooms and Procedure Rooms in a Service Area, including physician office based surgery rooms (when those data are officially

reported and available) OR b) all existing comparable outpatient Operating Rooms and Procedure Rooms based on the type of Cases to be performed. Additionally, applications should provide similar information on the availability of nearby out-of-state existing outpatient Operating Rooms and Procedure Rooms, if that data are available, and provide the source of that data. Unstaffed dedicated outpatient Operating Rooms and unstaffed dedicated outpatient Procedure Rooms are considered available for ambulatory surgery and are to be included in the inventory and in the measure of capacity.

RESPONSE: *There are no existing ASTCs within the Applicant's Service Area which currently provide eye services.*

4. **Need and Economic Efficiencies.** An applicant must document the potential impact that the proposed new ASTC would have upon the existing service providers and their referral patterns.
1. A CON application to establish an ASTC or to expand existing services of an ASTC should not be approved unless the existing ambulatory surgical services that provide comparable services regarding the types of Cases performed, if those services are known and relevant, within the applicant's proposed Service Area or within the applicant's facility are demonstrated to be currently utilized at 70% or above.
 2. The Division recognizes that estimated or average cleanup/preparation times and Case times may vary significantly by specialty and type of Case.
 3. The Department of Health is currently in the rule-making process necessary to implement the statute requiring the collection of office-based surgery data (Public Chapter 373, 2007). The Division recognizes that the Department of Health does not have sufficient data available on hospital ambulatory/outpatient surgery rooms at this time to include them in the determination of need; however, the Division plans to work with stakeholders towards this goal

RESPONSE: *Hospital outpatient surgery rooms were not included in this review due to insufficient data available and since applicant's proposed ASTC will be limited to ophthalmic surgical procedures and should not have an adverse impact on these facilities. No cases are currently being performed in the other existing ASTCs providing eye services within the Service Area. Based on this information the Applicant's proposed ASTC would not adversely impact the existing service providers.*

**EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
UTILIZATION-FYE 2015/FYE 2016/FYE 2017**

ESCLC UTILIZATION- # SURGICAL CASES:

	FYE 2015 Total	FYE 2016 Total	Increase % Cases	FYE 2017 Total	Increase % Cases
Cataract Surgery	984	1,359		1,393	
Glaucoma Surgery	11	34		30	
Other Eye Care Surgery	2	3		7	
Yag Laser Procedures	197	262		285	
Retina Laser Procedures	25	28		17	
SLT Laser Procedures	46	73		57	
Total	1,265	1,759	39.05%	1,789	1.71%

ASTC or Hospital Facility Utilized:

	OR Cases	PR Cases	OR Cases	PR Cases	OR Cases	PR Cases
Ft. Loudon Medical Ctr-Hospital-Lenoir City, TN	412		691		679	-
Roane Medical Ctr.-Harriman, TN	462		555		588	
The Surgery Center of Athens-Athens, TN	123		138		164	
Medical Offices of TEC Group		268		375		358
OR Cases	997		1,384		1,431	
PR Cases		268		375		358
Total-OR+PR	1,265		1,759		1,789	

**EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
IMPACT ON EXISTING ASTCS**

ASTC	Total- OR/PR	Utilization per JAR Reports-201			TEC Utiliz.-2017		W/O TEC Cases	
		Total-OR+PR	OR Cases	PR Cases	OR Cases	PR Cases	OR Cases	PR Cases
The Surgery Center of Athens								
Multispecialty-ASTC	2 / 1 = 3							
Ophthalmology		1,199	1,199	-	164		1,035	-
Total Outpatient Surgeries		2,311	2,311	-	164		2,147	-
Utilization % based on State Guidelines			91.49%	N/A			85.00%	N/A

*State Guidelines-TN HSDA in State Health Plan-1,263 CS/OR (70% min-884 CS/OR)

*State Guidelines-TN HSDA in State Health Plan-2,667 CS/PR (70% min-1,867 CS/PR)

Source of Information: Joint Annual Reports (JAR)-TN Dept of Health-Div. of Planning And Assessment(PPA)-
Health Facilities Statistics Unit & Clinical data/information from TEC Group Medical Practice.

5. **Need and Economic Efficiencies.** An application for a Specialty ASTC should present its projections for the total number of cases based on its own calculations for the projected length of time per type of case, and shall provide any local, regional, or national data in support of its methodology. An applicant for a Specialty ASTC should provide its own definitions of the surgeries and/or procedures that will be performed and whether the Surgical Cases will be performed in an Operating Room or a Procedure Room. An applicant for a Specialty ASTC must document the potential impact that the proposed new ASTC would have upon the existing service providers and their referral patterns. A CON proposal to establish a Specialty ASTC or to expand existing services of a Specialty ASTC shall not be approved unless the existing ambulatory surgical services that provide comparable services regarding the types of Cases performed within the applicant's proposed Service Area or within the applicant's facility are demonstrated to be currently utilized at 70% or above. An applicant that is granted a CON for a Specialty ASTC shall have the specialty or limitation placed on the CON.

RESPONSE: *The Applicant is applying for CON approval and licensure as a Specialty ASTC in Ophthalmology. The information and documentation has been included in other sections within the application. The proposed Specialty ASTC if approved will have a positive impact on the Service Area as there are no existing specialty ASTCs providing eye services within the service area, The only ASTC close to the service area is The Surgery Center of Athens and it is a multi-specialty ASTC and will not experience a significant decrease since the majority of the TEC surgical volume is generated in Lenoir City and Harriman practice locations.*

**EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
IMPACT ON EXISTING ASTCS**

ASTC	Total-OR/PR	Utilization per JAR Reports-2017			TEC Utiliz.-2017		W/O TEC Cases	
		Total-OR+P	OR Case	PR Cases	OR Case	PR Cases	OR Cases	PR Cases
The Surgery Center of Athens								
Multispecialty-ASTC	2 / 1 = 3							
Ophthalmology		1,199	1,199	-	164		1,035	-
Total Outpatient Surgeries		2,311	2,311	-	164		2,147	-
Utilization % based on State Guidelines			91.49%	N/A			85.00%	N/A

*State Guidelines-TN HSDA in State Health Plan-1,263 CS/OR (70% min-884 CS/OR)

*State Guidelines-TN HSDA in State Health Plan-2,667 CS/PR (70% min-1,867 CS/PR)

Source of Information: Joint Annual Reports (JAR)-TN Dept of Health-Div. of Planning And Assessment(PPA)-Health Facilities Statistics Unit & Clinical data/information from TEC Group Medical Practice.

Other Standards and Criteria-

6. **Access to ASTCs.** The majority of the population in a Service Area should reside within 60 minutes average driving time to the facility.

RESPONSE: *The majority of the population in the Service Area in 2018 reside in Loudon and Roane Counties TN-112,108-Total Service Area (over 64%). The proposed facility site is located in Lenoir City, TN-Loudon County and is within the 60 minutes average driving time for all areas within Loudon & Roane Counties. In addition, the proposed facility site is located within the 60 minutes average driving time of every major community within the East Tenn Area as set forth in the Schedule below:*

PROXIMITY OF PROJECT ASTC 5491 CREEKWOOD PARK BLVD- LENOIR CITY, TN-LOUDON COUNTY TO EAST TN COMMUNITIES			Distance - Miles	Drive Time- Minutes
Location-City	County	State		
Friendsville	Blount	TN	14.1	21
Maryville	Blount	TN	22.5	32
Alcoa	Blount	TN	22.3	31
Loudon	Loudon	TN	11.7	18
Philadelphia	Loudon	TN	15.9	17
Athens	McMinn	TN	35.4	37
Decatur	Meigs	TN	43.1	41
Sweetwater	Monroe	TN	22.9	24
Madisonville	Monroe	TN	34.2	37
Oakdale	Morgan	TN	27.7	36
Spring City	Rhea	TN	44.2	49
Kingston	Roane	TN	17.2	19

Source of Information: Google Maps, May 2018

7. **Access to ASTCs.** An applicant should provide information regarding the relationship of an existing or proposed ASTC site to public transportation routes if that information is available.

RESPONSE: *Public transportation services are available to Loudon & Roane County residents through ETHRA Public Transportation which provides public transportation services to residents of all ages in all 16 East Tennessee counties and TennCare Transportation will provide transportation for eligible enrollees to the proposed ASTC site.*

8. **Access to ASTCs.** An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project the origin of potential patients by percentage and county of residence and, if such data are readily available, by zip code, and must note where they are currently being served. Demographics of the Service Area should be included, including the anticipated provision of services to out-of-state patients, as well as the identity of other service providers both in and out of state and the source of out-of-state data. Applicants shall document all other provider alternatives available in the Service Area. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

RESPONSE: *The Applicant has provided and addressed the requested information and documentation including assumptions in other areas and schedules within the application.*

9. **Access and Economic Efficiencies.** An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project patient utilization for each of the first eight quarters following completion of the project. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

RESPONSE: *See Table below. Projected patient utilization is based on actual procedures performed by TEC group for 2017 with increase of 10% cumulative growth (from 2017 to 2019) in Year 1-2019 and 10% annual growth in Year 2-2020. This is conservative based on aging population trends of the Service Area in excess of 16.2% in the 65+ age group and population growth from 2018 to 2022.*

# PROCEDURES PROJECTED:	QTR 1	QTR 2	QTR 3	QTR 4	TOTAL	QTR 1	QTR 2	QTR 3	QTR 4	TOTAL
	YEAR 1	YEAR 1	YEAR 1	YEAR 1		YEAR 2	YEAR 2	YEAR 2	YEAR 2	
Cataract Surgery	383	383	383	383	1,532	422	422	421	421	1,686
Glaucoma Surgery	8	8	8	9	33	9	9	9	9	36
Other Eye Care Sx Procedures	2	2	2	2	8	2	2	2	2	8
Yag Laser Procedures	78	78	78	79	313	86	86	87	86	345
Retina Laser Procedures	5	5	5	4	19	6	5	5	5	21
SLT Laser Procedures	16	16	16	15	63	17	17	17	18	69
Total	492	492	492	492	1,968	542	541	541	541	2,165

10. Patient Safety and Quality of Care; Health Care Workforce.

- a. An applicant should be or agree to become accredited by any accrediting organization approved by the Centers for Medicare and Medicaid Services, such as the Joint Commission, the Accreditation Association of Ambulatory Health Care, the American Association for Accreditation of Ambulatory Surgical Facilities, or other nationally recognized accrediting organization.
- b. An applicant should estimate the number of physicians by specialty that are expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel. An applicant should provide documentation on the availability of appropriate and qualified staff that will provide ancillary support services, whether on- or off-site.

RESPONSE: *The Applicant plans to become accredited through the Accreditation Association of Ambulatory Health Care (AAAHC). The Applicant will initially credential and extend surgical privileges to the two physician owners of the proposed ASTC-Dr. Browning & Dr. Lowrance (the TEC group) who will perform the ophthalmic surgery and eye laser procedures in the Facility. The Applicant will consider offering surgical privileges for utilization of the ASTC to other qualified ophthalmic surgeons once the appropriate physician credentialing and admission policies have been established by the organization. CRNA staff has been identified and the Applicant has provided a Letter from the CRNA in the Attachment Section-Contribution to the Orderly Development of Healthcare. There are several accredited nursing programs including UT-Knoxville and other schools within the Knoxville, TN area that can provide an excellent source for recruitment of Registered Nurses and other qualified staff.*

11. Access to ASTCs. In light of Rule 0720-11.01, which lists the factors concerning need on which an application may be evaluated, and Principle No. 2 in the State Health Plan, "Every citizen should have reasonable access to health care," the HSDA may decide to give special consideration to an applicant:

- a. Who is offering the service in a medically underserved area as designated by the United States Health Resources and Services Administration;
- b. Who is a "safety net hospital" or a "children's hospital" as defined by the Bureau of TennCare Essential Access Hospital payment program;

c. Who provides a written commitment of intention to contract with at least one TennCare MCO and, if providing adult services, to participate in the Medicare program; or d. Who is proposing to use the ASTC for patients that typically require longer preparation and scanning times. The applicant shall provide in its application information supporting the additional time required per Case and the impact on the need standard. The Division recognizes that not all ASTCs can be CMS certified or accredited.

RESPONSE: *Not necessary. Applicant meets utilization criteria.*

2. Describe the relationship of this project to the applicant facility's long-range development plans, if any, and how it relates to related previously approved projects of the applicant. **RESPONSE:** *Thomas Browning, MD & Matthew Lowrance DO have ownership in the Eye Surgery Center of Knoxville ,LLC located at 7739 Dannaher Drive, Powell, TN 37849. which has begun operations as a licensed & Medicare certified single specialty ophthalmic ASTC in Knox County, TN. The TEC Group practice in Knoxville will support surgical volume for the Knox County ASC and the TEC Harriman & TEC Lenoir City practices will support the proposed ASTC upon completion.*

3. Identify the proposed service area and justify the reasonableness of that proposed area. Submit a county level map for the Tennessee portion of the service area using the map on the following page, clearly marked to reflect the service area as it relates to meeting the requirements for CON criteria and standards that may apply to the project. Please include a discussion of the inclusion of counties in the border states, if applicable. **Attachment Section B**
- Need-3.

RESPONSE: *See Service Area Maps included in Attachment Section B-Need-3. The Service Area is justified in that over 64% of patients having surgical procedures performed by the TEC group in 2017 originated from the two counties in Tennessee-Loudon & Roane. No counties in border states are included in the proposed service area. The ASTC proposed site is ideally located in the Loudon County-Lenoir City area to service this market and provide comprehensive quality eye care to a growing and aging population. There are currently no ASTCs licensed in Loudon or Roane County so all of the ophthalmic surgery referred from the TEC practice office locations are currently being performed in the two hospitals in Lenoir City and Harriman and the multi-specialty ASTC in Athens TN-McMinn County...*

Please complete the following tables, if applicable: **RESPONSE:**

See Schedule of the Two County Service Area Utilization Below. Historical Utilization reflects Procedures performed for year end 2017 by the two specialists of the TEC group from the medical clinic records of surgical procedures performed. Applicant anticipates growth in both TEC affiliated practice locations in Loudon & Roane Counties and projects similar patient origin trends for the next several years-64.67%, in Service Area. TEC plans to add additional eye care providers

to its TEC medical group practice in order to accommodate the anticipated growth in surgical procedures from the aging population requiring diagnostic and surgical treatment of eye diseases.

EAST TN- COUNTIES SERVED BY TEC PHYSICIANS/SURGEONS	HISTORICAL UTILIZATION- COUNTY RESIDENTS- 2017	% OF TOTAL PROCEDURES
LOUDON	491	27.45%
ROANE	666	37.23%
TOTAL PRIMARY SERVICE AREA	1,157	64.67%

McMINN	173	9.67%
BLOUNT	135	7.55%
OTHER < 5.0%	324	18.11%

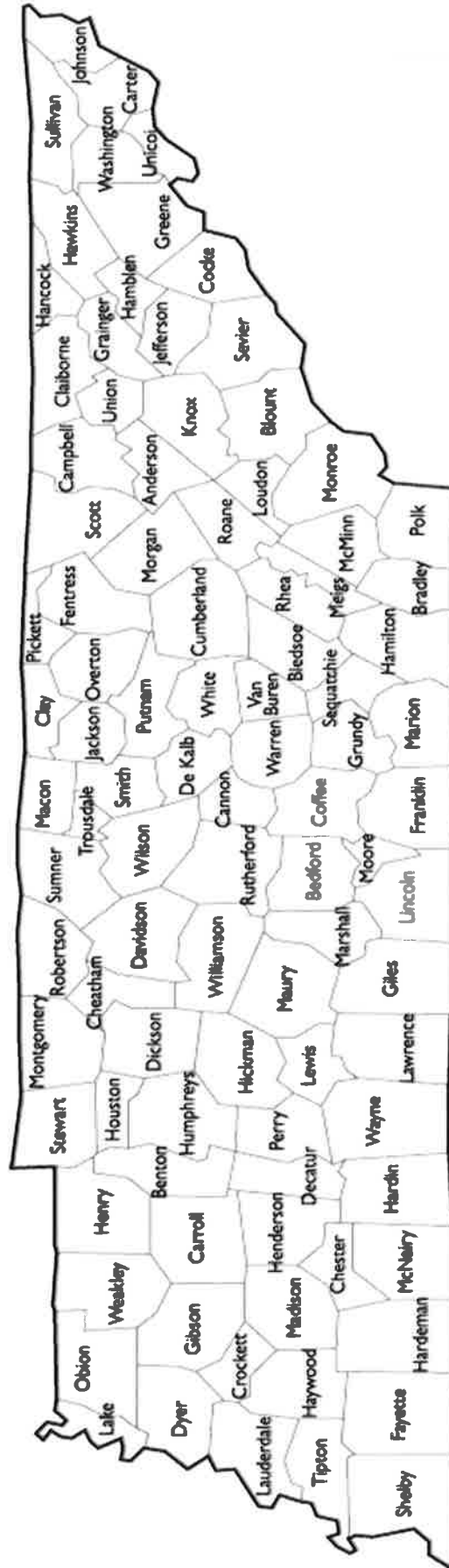
TOTAL	1,789	100.00%
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EAST TN- COUNTIES SERVED BY TEC PHYSICIANS/SURGEONS	PROJECTED UTILIZATION- COUNTY RESIDENTS-YR 1	% OF TOTAL PROCEDURES
LOUDON	540	30.19%
ROANE	733	37.23%
TOTAL PRIMARY SERVICE AREA	1,273	64.67%

McMINN	190	9.67%
BLOUNT	149	7.55%
OTHER < 5.0%	356	18.11%

TOTAL	1,968	100.00%
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County Level Map



4. A. 1) Describe the demographics of the population to be served by the proposal.

RESPONSE: *The Demographics of the Service Area is summarized in the Table below. The median age is 46.8 yrs. which is older than the TN median age-38.5 yrs. The 65+ age group is expected to increase by 16.2% from 2018 to 2022 which will require more eye care treatment and cataract surgery for age related vision loss in the immediate future and the coming years. This trend is projected to continue beyond 2022. TennCare enrollees within the Service Area total 20,692 representing 18.5% of total TennCare enrollees per Bureau of TennCare April 2018 report.. The total statewide enrollment in TennCare at April 2018 is 1,432,475 which represents 20.6% of the state's population-6,960,524.*

- 2) Using current and projected population data from the Department of Health, the most recent enrollee data from the Bureau of TennCare, and demographic information from the US Census Bureau, complete the following table and include data for each county in your proposed service area.

Projected Population Data: <http://www.tn.gov/health/article/statistics-population>

TennCare Enrollment Data: <http://www.tn.gov/tenncare/topic/enrollment-data>

Census Bureau Fact Finder: <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>

Demographic Variable/Geographic Area	Department of Health/Health Statistics							Bureau of the Census				TennCare	
	Total Population-Current Year	Total Population-Projected Year	Total Population-% Change	*Target Population-Current Year	*Target Population-Project Year	*Target Population-% Change	Target Population Projected Year as % of Total	Median Age	Median Household Income	Person Below Poverty Level	Person Below Poverty Level as % of Total	TennCare Enrollees	TennCare Enrollees as % of Total
County A													
County B, etc.													
Service Area Total													
State of TN Total													

** Target Population is population that project will primarily serve. For example, nursing home, home health agency, hospice agency projects typically primarily serve the Age 65+ population; projects for child and adolescent psychiatric services will serve the Population Ages 0-19. Projected Year is defined in select service-specific criteria and standards. If Projected Year is not defined, default should be four years from current year, e.g., if Current Year is 2018, then default Projected Year is 2022.*

RESPONSE: *See Demographic Table for Eye Surgery Center of Lenoir City Service Area*

Demographic Table for Eye Surgery Center of Lenoir City Service Area

Demographic Variable/ Geographic Area	Department of Health/Health Statistics*								Bureau of the Census**				TennCare***	
	Population Estimate 2018			Population Estimate 2022			% Increase		Median Age	Median Household Income	# Persons Below Poverty Level	# Persons Below Poverty Level as a % of Total	TennCare Enrollees	TennCare Enrollees as a % of Total
	Total	65+	% 65+	Total	65+	% 65+	65+	Total						
Loudon	56,118	16,504	29.4%	59,673	19,337	32.4%	17.2%	6.3%	47.2	52,995	6,767	12.1%	9,242	16.5%
Roane	55,990	13,505	24.1%	57,022	15,536	27.2%	15.0%	1.8%	46.3	42,299	8,449	15.1%	11,450	20.5%
Service Area Total	112,108	30,009	26.8%	116,695	34,873	29.9%	16.2%	4.1%	46.8	47,647	15,216	13.6%	20,692	18.5%
State of TN Total	6,960,524	1,175,938	16.9%	7,263,893	1,362,320	18.8%	15.8%	4.4%	38.5	46,574	1,100,169	15.8%	1,432,475	20.6%

* 2017 Revised UTCBER Population Projection Series

Source: The University of Tennessee Center for Business and Economic Research Population Projection Data Files, Reassembled by the Tennessee Department of Health, Division of Policy, Planning and Assessment.

Note: These data will not match the University of Tennessee Data exactly due to rounding.

** Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates

*** Source: TennCare Enrollment Report for April 2018

- B. Describe the special needs of the service area population, including health disparities, the accessibility to consumers, particularly the elderly, women, racial and ethnic minorities, and low-income groups. Document how the business plans of the facility will take into consideration the special needs of the service area population.

RESPONSE: *The 65+yrs age group is continuing to grow at a significant rate within the Service Area. Accordingly, there is a high prevalence of cataracts, age-related macular degeneration, glaucoma, and other eye diseases which create loss of vision in this age group requiring access to quality care and surgery in a cost effective environment. The proposed Facility can address these needs. Historically, the TEC group physicians have treated patients from all racial, ethnic minorities, and low-income groups without discrimination and have provided a significant amount of indigent care which will continue with the proposed ASTC. The proposed ASTC will participate in all TennCare/ Medicaid programs and Medicare/Medicare Managed programs to address the special needs of these patients.*

5. Describe the existing and approved but unimplemented services of similar healthcare providers in the service area. Include utilization and/or occupancy trends for each of the most recent three years of data available for this type of project. List each provider and its utilization and/or occupancy individually. Inpatient bed projects must include the following data: Admissions or discharges, patient days, average length of stay, and occupancy. Other projects should use the most appropriate measures, e.g., cases, procedures, visits, admissions, etc. This doesn't apply to projects that are solely relocating a service.

RESPONSE: *There are currently no existing ASTCs within the Applicant's Primary Service Area-Loudon & Roane Counties in TN which currently provide eye services. The Hospital outpatient facilities-Ft, Loudon Medical Center in Lenoir City and Roane Medical Center in Harriman are the only facilities providing eye surgery within this service area.and the data is insufficient to make any determination*

6. Provide applicable utilization and/or occupancy statistics for your institution for each of the past three years and the projected annual utilization for each of the two years following completion of the project. Additionally, provide the details regarding the methodology used to project utilization. The methodology **must include** detailed calculations or documentation from referral sources, and identification of all assumptions.

RESPONSE: *The ophthalmic surgical and eye laser procedure cases performed by the two ophthalmic surgeons representing the TEC medical eye care practice (the "TEC group") for the three-year period 2015 through 2017 by ASTC, Hospital facility, or office facilities (where these were performed) are reflected in the schedule below. Based on this historical utilization by the TEC group the Applicant projects an increase in surgical case volume of 10.0% (cumulative from year ending 2017 to Year 1-2019) and an annual increase of 10.0% in surgical case volume for Year2- 2020. This assumes that the proposed ASTC is approved, licensed, accredited and operational as of June 1, 2019 and the TEC group will perform all of the projected cases for Year 1 and Year 2 in the new ophthalmic ASTC.*

EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
UTILIZATION-FYE 2015/FYE 2016/FYE 2017

ESCLC UTILIZATION- # SURGICAL CASES:

	FYE 2015 Total	FYE 2016 Total	Increase % Cases	FYE 2017 Total	Increase % Cases
Cataract Surgery	984	1,359		1,393	
Glaucoma Surgery	11	34		30	
Other Eye Care Surgery	2	3		7	
Yag Laser Procedures	197	262		285	
Retina Laser Procedures	25	28		17	
SLT Laser Procedures	46	73		57	
Total	1,265	1,759	39.05%	1,789	1.71%

ASTC or Hospital Facility Utilized:

	OR Cases	PR Cases	OR Cases	PR Cases	OR Cases	PR Cases
Ft. Loudon Medical Ctr-Hospital-Lenoir City,TN	412		691		679	-
Roane Medical Ctr.-Harriman,TN	462		555		588	
The Surgery Center of Athens-Athens, TN	123		138		164	
Medical Offices of TEC Group		268		375		358
OR Cases	997		1,384		1,431	
PR Cases		268		375		358
Total-OR+PR	1,265		1,759		1,789	

EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
UTILIZATION-FYE 2015/FYE 2016/FYE 2017

ESCLC UTILIZATION- # SURGICAL CASES:

	ACTUAL			PROJECTED	
	FYE 2015 Total	FYE 2016 Total	FYE 2017 Total	YR 1 Total	YR 2 Total
Cataract Surgery	984	1,359	1,393	1,532	1,686
Glaucoma Surgery	11	34	30	33	36
Other Eye Care Surgery	2	3	7	8	8
Yag Laser Procedures	197	262	285	314	345
Retina Laser Procedures	25	28	17	19	21
SLT Laser Procedures	46	73	57	63	69
Total	1,265	1,759	1,789	1,968	2,165

Growth-% 39.05% 1.71% 10.00% 10.00%

ECONOMIC FEASIBILITY

1. Provide the cost of the project by completing the Project Costs Chart on the following page. Justify the cost of the project.
 - A. All projects should have a project cost of at least \$15,000 (the minimum CON Filing Fee). (See Application Instructions for Filing Fee)
 - B. The cost of any lease (building, land, and/or equipment) should be based on fair market value or the total amount of the lease payments over the initial term of the lease, whichever is greater. Note: This applies to all equipment leases including by procedure or "per click" arrangements. The methodology used to determine the total lease cost for a "per click" arrangement must include, at a minimum, the projected procedures, the "per click" rate and the term of the lease.
 - C. The cost for fixed and moveable equipment includes, but is not necessarily limited to, maintenance agreements covering the expected useful life of the equipment; federal, state, and local taxes and other government assessments; and installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding, which should be included under construction costs or incorporated in a facility lease.
 - D. Complete the Square Footage Chart on page 8 and provide the documentation. Please note the Total Construction Cost reported on line 5 of the Project Cost Chart should equal the Total Construction Cost reported on the Square Footage Chart.
 - E. For projects that include new construction, modification, and/or renovation—documentation must be provided from a licensed architect or construction professional that support the estimated construction costs. Provide a letter that includes the following:
 - 1) A general description of the project;
 - 2) An estimate of the cost to construct the project;
 - 3) A description of the status of the site's suitability for the proposed project; and
 - 4) Attesting the physical environment will conform to applicable federal standards, manufacturer's specifications and licensing agencies' requirements including the AIA Guidelines for Design and Construction of Hospital and Health Care Facilities in current use by the licensing authority.

RESPONSE:

***Project Cost Chart-Item A.line 1.**Architectural & Engineering Fees were estimated by Architect.*

***Project Cost Chart-Item A.line 2 .**A contingency amount for Legal, Administrative & Consultant Fees were estimated by Consultant & Attorney representing the Project.*

***Project Cost Chart-Item A.lines 4-6.** Includes cost estimates by Architect for Preparation of Site, Total Construction Costs -3,889 sq. ft facility at \$150/sq. ft =\$583,350.00 in addition to a contingency amount of \$50,000.00 (Total Adjusted Cost with contingency=\$633,350.00) to complete shelled in space. See Attachment B-Economic Feasibility-1 Documentation of Construction Cost Estimate-Licensed Architect Letter.*

***Project Cost Chart-Item A.line 8.** Moveable equipment includes all medical/surgical equipment, office equipment, computer & telecommunication equipment, furniture & fixtures for designated areas within the facility. The two operating rooms will each be equipped with a phaco unit (approx.\$62,000 per unit) and a*

surgical microscope (approx.\$52,000 per unit). Total cost for equipment was provided based on discussions with vendors and estimate from Consultant (phaco units & surgical microscopes would be only items in excess of \$50,000).

Item 1.A. Based on Instructions-CON Application Fee=\$5.75/\$1000.00 for Project Cost (\$15,000-Minimum) \$15,000.00 is required for CON Application Fee.

Item 1. B. Represents N/A-Not Applicable.

Item 1. C. Addressed in Cost estimate Project Cost Chart-Item A. line 8.

Item 1. D. Square Footage Chart completed. ASTC Construction Cost Per Square Foot for Years 2015-2017

Construction ranges are not available due to insufficient sample size from TN-HSDA. ASTC Construction Cost Per Square Foot for Years 2015-2017 for new construction projects approved by TN-HSDA ranged from \$200.00/sq ft-1st Quartile; \$252.74/sq ft-Median; \$371.75/sq ft-3rd Quartile. Based on this information the project is well within the range for ASTC new construction projects at \$150.00/sq.ft (exclusive of land & site preparation costs) .

Item 1.E. See Attachment B-Economic Feasibility-1 Documentation of Construction Cost Estimate-Licensed Architect Letter.

PROJECT COST CHART

A. Construction and equipment acquired by purchase:

1.	Architectural and Engineering Fees	\$60,000.00
2.	Legal, Administrative (Excluding CON Filing Fee), Consultant Fees	\$75,000.00
3.	Acquisition of Site	
4.	Preparation of Site	
5.	Total Construction Costs (3,889 sq ft @ \$150.00/sq ft)	\$583,350.00
6.	Contingency Fund	\$50,000.00
7.	Fixed Equipment (Not included in Construction Contract)	
8.	Moveable Equipment (List all equipment over \$50,000 as separate attachments)	\$500,000.00
9.	Other (Specify): _____	

B. Acquisition by gift, donation, or lease:

	1.	Facility (inclusive of building and land) * 10 YR- Initial Term	* \$900,000.00
*	2.	Building only Lease at \$7,500.00/MO	
	3.	Land only	
	4.	Equipment (Specify) _____	
	5.	Other (Specify) _____	

C. Financing Costs and Fees:

1.	Interim Financing	
2.	Underwriting Costs	
3.	Reserve for One Year's Debt Service	
4.	Other (Specify) _____	

D. Estimated Project Cost (A+B+C) \$2,168,350.00

E. CON Filing Fee \$15,000.00

F. Total Estimated Project Cost
(D+E) Actual Capital Cost Required- \$1,283,350 Plus Section B= \$2,183,350.00

2. Identify the funding sources for this project.

Check the applicable item(s) below and briefly summarize how the project will be financed. **(Documentation for the type of funding *MUST* be inserted at the end of the application, in the correct alpha/numeric order and identified as Attachment Section B-Economic Feasibility-2.)**

- ☒ A. Commercial loan – Letter from lending institution or guarantor stating favorable initial contact, proposed loan amount, expected interest rates, anticipated term of the loan, and any restrictions or conditions;
- ☐ B. Tax-exempt bonds – Copy of preliminary resolution or a letter from the issuing authority stating favorable initial contact and a conditional agreement from an underwriter or investment banker to proceed with the issuance;
- ☐ C. General obligation bonds – Copy of resolution from issuing authority or minutes from the appropriate meeting;
- ☐ D. Grants – Notification of intent form for grant application or notice of grant award;
- ☐ E. Cash Reserves – Appropriate documentation from Chief Financial Officer of the organization providing the funding for the project and audited financial statements of the organization; and/or
- ☐ F. Other – Identify and document funding from all other sources.

RESPONSE: *The project's capital renovation construction costs, equipment costs, and organizational costs will be financed through bank loans from First Citizens Bank-Knoxville, Tennessee, totaling \$1,283,350. See letter from lending institution- First Citizens Bank in Attachment Section B-Economic Feasibility-2. The Lease Value in Section B of the Project Chart Cost-\$900,000 represents 10 yr initial term for the renovated ASTC space at \$7,500/Month/\$90,000/Yr*

3. Complete Historical Data Charts on the following two pages—**Do not modify the Charts provided or submit Chart substitutions!**

Historical Data Chart represents revenue and expense information for the last *three* (3) years for which complete data is available. Provide a Chart for the total facility and Chart just for the services being presented in the proposed project, if applicable. **Only complete one chart if it suffices.**

Note that "Management Fees to Affiliates" should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. "Management Fees to Non-Affiliates" should include any management fees paid by agreement to third party entities not having common ownership with the applicant

RESPONSE: *See Historical Data Chart.*

HISTORICAL DATA CHART

Give information for the last three (3) years for which complete data are available for the facility or agency.

The fiscal year begins in ____January____ (Month).

	Year 2015	Year 2016	Year 2017
A. Utilization Data (Specify unit of measure)	37,296	41,149	44,312
	<i>Patient Encounters</i>	<i>Patient Encounters</i>	<i>Patient Encounters</i>
B. Revenue from Services to Patients			
1 Inpatient Services	\$ -	\$ -	\$ -
2 Outpatient Services	-	-	-
3 Emergency Services	-	-	-
4 Other Operating Revenue (Specify) Patient Services	<u>14,365,322</u>	<u>18,352,323</u>	<u>19,763,287</u>
Gross Operating Revenue	\$ 14,365,322	\$ 18,352,323	\$ 19,763,287
C. Deductions from Gross Operating Revenue			
1 Contractual Adjustments	\$ 6,560,964	\$ 10,020,329	\$ 10,755,809
2 Provision for Charity Care	80,625	123,136	132,174
3 Provisions for Bad Debt	<u>249,456</u>	<u>380,985</u>	<u>408,949</u>
Total Deductions	\$ 6,891,045	\$ 10,524,450	\$ 11,296,932
NET OPERATING REVENUE	\$ 7,474,277	\$ 7,827,873	\$ 8,466,355
D. Operating Expenses			
1 Salaries and Wages			
a. Direct Patient Care	\$ 2,056,412	\$ 2,383,659	\$ 2,337,126
b. Non-Patient Care	-	-	-
2 Physician's Salaries and Wages	2,495,080	2,554,265	2,811,252
3 Supplies	270,998	399,826	461,705
4 Rent			
a. Paid to Affiliates	467,654	391,265	487,253
b. Paid to Non-Affiliates	174,632	236,272	296,412
5 Management Fees:			
a. Paid to Affiliates	-	-	-
b. Paid to Non-Affiliates	-	-	-
6 Other Operating Expenses	<u>1,216,153</u>	<u>1,135,402</u>	<u>1,546,393</u>
Total Operating Expenses	6,680,929	7,100,689	7,940,141
E. Earnings Before Interest, Taxes and Depreciation	\$ 793,348	\$ 727,184	\$ 526,214
F. Non-Operating Expenses			
1 Taxes	206,446	226,752	231,453
2 Depreciation	74,018	171,099	80,648
3 Interest	-	-	-
4 Other Non-Operating Expenses	<u>-</u>	<u>-</u>	<u>-</u>
Total Non-Operating Expenses	\$ 280,464	\$ 397,851	\$ 312,101
NET INCOME (LOSS)	\$ 512,884	\$ 329,333	\$ 214,113

Chart Continues on to Next Page

NET INCOME (LOSS)	\$	512,884	\$	329,333	\$	214,113
G. Other Deductions						
1 Annual Principal Debt Repayment	\$	127,957	\$	325,404	\$	150,393
2 Annual Capital Expenditure		28,516		26,782		17,210
Total Other Deductions	\$	<u>156,473</u>	\$	<u>352,186</u>	\$	<u>167,603</u>
NET BALANCE	\$	356,411	\$	(22,853)	\$	46,510
DEPRECIATION		<u>228,648</u>		<u>152,491</u>		<u>139,690</u>
FREE CASH FLOW (Net Balance + Depreciation)	\$	585,059	\$	129,638	\$	186,200

Project Only

HISTORICAL DATA CHART-OTHER EXPENSES

OTHER EXPENSES CATEGORIES

1 Repairs & Maintenance	\$	388,080	\$	217,400	\$	196,775
2 Employee Benefit Programs		169,491		211,227		383,090
3 Pension, profit-sharing, etc.plans		-		81,368		103,293
4 Advertising		15,547		18,530		8,402
5 Travel, Meals & Entertainment		61,360		66,020		58,925
6 Legal & Accounting		443		15,624		17,534
7 Professional Services		112,738		13,212		280,555
8 Computer Services		105,802		125,369		93,946
9 Insurance		80,452		56,533		66,023
10 Telephone & Utilities		157,889		137,336		109,551
11 Office Expenses		80,483		131,429		194,543
12 Dues & Subscriptions		35,723		27,315		23,335
13 General & Administrative Expenses-Other		<u>8,145</u>		<u>34,039</u>		<u>10,421</u>
Total Other Expenses	\$	1,216,153	\$	1,135,402	\$	1,546,393

4. Complete Projected Data Charts on the following two pages – **Do not modify the Charts provided or submit Chart substitutions!**

The Projected Data Chart requests information for the two years following the completion of the proposed services that apply to the project. Please complete two Projected Data Charts. One Projected Data Chart should reflect revenue and expense projections for the ***Proposal Only*** (i.e., if the application is for additional beds, include anticipated revenue from the proposed beds only, not from all beds in the facility). The second Chart should reflect information for the total facility. **Only complete one chart if it suffices.**

Note that "Management Fees to Affiliates" should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. "Management Fees to Non-Affiliates" should include any management fees paid by agreement to third party entities not having common ownership with the applicant.

RESPONSE: *See Projected Data Chart.*

PROJECTED DATA CHART

Give information for the two following the completion of this proposal.

The fiscal year begins in ____June____ (Month).

	Year 2018	Year 2019
A. Utilization Data (Specify unit of measure)	1,968	2,165
	<i>Surgical Cases</i>	<i>Surgical Cases</i>
B. Revenue from Services to Patients		
1 Inpatient Services	\$ -	\$ -
2 Outpatient Services	-	-
3 Emergency Services	-	-
4 Other Operating Revenue (Specify) ASTC-Facility Fee	<u>3,382,940</u>	<u>3,721,234</u>
Gross Operating Revenue	\$ 3,382,940	\$ 3,721,234
C. Deductions from Gross Operating Revenue		
1 Contractual Adjustments	\$ 1,870,042	\$ 2,057,046
2 Provision for Charity Care	29,219	32,141
3 Provisions for Bad Debt	<u>48,699</u>	<u>53,569</u>
Total Deductions	\$ 1,947,960	\$ 2,142,756
NET OPERATING REVENUE	\$ 1,434,980	\$ 1,578,478
D. Operating Expenses		
1 Salaries and Wages		
a. Direct Patient Care	\$ 181,376	\$ 186,817
b. Non-Patient Care	68,640	70,699
2 Physician's Salaries and Wages	-	-
3 Supplies	389,180	436,660
4 Rent		
a. Paid to Affiliates	90,000	90,000
b. Paid to Non-Affiliates	-	-
5 Management Fees:		
a. Paid to Affiliates	-	-
b. Paid to Non-Affiliates	-	-
6 Other Operating Expenses	<u>314,003</u>	<u>323,423</u>
Total Operating Expenses	\$ 1,043,199	\$ 1,107,600
E. Earnings Before Interest, Taxes and Depreciation	\$ 391,781	\$ 470,878
F. Non-Operating Expenses		
1 Taxes	\$ 10,000	\$ 10,300
2 Depreciation	101,429	101,429
3 Interest	27,161	23,032
4 Other Non-Operating Expenses	<u>-</u>	<u>-</u>
Total Non-Operating Expenses	\$ 138,590	\$ 134,760
NET INCOME (LOSS)	\$ 253,191	\$ 336,118

Chart Continues on to Next Page

NET INCOME (LOSS)	\$	253,191	\$	336,118
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G. Other Deductions

1 Annual Principal Debt Repayment	\$	89,650	\$	93,780
2 Annual Capital Expenditure		-		-

Total Other Deductions	\$	89,650	\$	93,780
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NET BALANCE	\$	163,540	\$	242,338
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DEPRECIATION		101,429		101,429
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FREE CASH FLOW (Net Balance + Depreciation)	\$	264,969	\$	343,766
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Project Only

PROJECTED DATA CHART-OTHER EXPENSES

OTHER EXPENSES CATEGORIES

1 Repairs & Maintenance	\$	20,000	\$	20,600
2 Employee Benefit Programs		50,003		51,503
3 Pension, profit-sharing, etc.plans		-		-
4 Advertising		2,500		2,575
5 Travel, Meals & Entertainment		2,000		2,060
6 Legal & Accounting		20,000		20,600
7 Professional Services		135,000		139,050
8 Computer Services		24,000		24,720
9 Insurance		20,000		20,600
10 Telephone & Utilities		15,000		15,450
11 Office Expenses		12,000		12,360
12 Dues & Subscriptions		7,500		7,725
13 General & Administrative Expenses-Other		6,000		6,180
Total Other Expenses	\$	314,003	\$	323,423

5. A. Please identify the project's average gross charge, average deduction from operating revenue, and average net charge using information from the Projected Data Chart for Year 1 and Year 2 of the proposed project. Please complete the following table. **RESPONSE:** *See Table below.*

	Previous Year	Current Year	Year One	Year Two	% Change (Current Year to Year 2)
Gross Charge (Gross Operating Revenue/Utilization Data)	N/A	N/A	\$1,719.06	\$1,718.81	0.00%
Deduction from Revenue (Total Deductions/Utilization Data)	N/A	N/A	\$989.82	\$989.73	0.00%
Average Net Charge (Net Operating Revenue/Utilization Data)	N/A	N/A	\$729.24	\$729.08	0.00%

- B. Provide the proposed charges for the project and discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the project and the impact on existing patient charges.

RESPONSE: *This is a new project and there are no existing (current) charges to be affected by the implementation of this proposal. The proposed charges for the project are set forth in the following Section C. along with anticipated revenue from the project which is set forth in the Projected Data Chart.*

- C. Compare the proposed charges to those of similar facilities in the service area/adjoining service areas, or to proposed charges of projects recently approved by the Health Services and Development Agency. If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

RESPONSE: *The proposed gross charge/case (\$1,719.06- YR 1 & \$1718.81-YR 2) and average net charge/case (\$729.24-YR 1 & \$729.08-YR 2) for the project are lower than the overall average gross charge/case than multi-specialty ASTC rates and considerably lower than Hospital Outpatient Department (HOPD) payment rates for the same procedures under Medicare. Proposed charges have been scheduled in accordance with the project's most frequently performed procedures by CPT code in contrast with the current Medicare allowable fee schedule for the Loudon County, TN CSA -28940 effective as of 1/1/2018, and projected utilization data for YRs 1 & 2. See Schedules below.*

Eye Surgery Center of Lenoir City (ESCLC)-Charge Schedule
Palmetto GBA-CMS Medicare Allowable Reimbursement Rates
for Ambulatory Surgery Centers-Effective 1/1/2018
Most Frequent Procedures to be Performed-ESCLC

CPT #	Description	ESCLC Charge YR 1 & YR 2	Medicare Rates Loudon County-TN CSA (28940)*	CPT Group	Projected Utilization	
					YR 1-2019 # Cases	YR 2-2020 # Cases
65855	TRABECULOPLASTY-LASER-1/MORE SESSION	\$ 600.00	\$ 114.52	Laser-SLT	63	69
66761	IRIDOTOMY /IRIDECTOMY BY LASER	\$ 600.00	\$ 164.33	Yag-PI		
66821	YAG CAPSULOTOMY	\$ 600.00	\$ 220.59	Yag-Cap	314	345
66825	REPOSITIONING OF IOL	\$ 2,000.00	\$ 860.81	Cat-Sx		
66852	REMOVAL OF LENS MATERIAL	\$ 2,000.00	\$ 1,509.21	Cat-Sx		
66982	CATARACT SURGERY COMPLEX	\$ 2,000.00	\$ 860.81	Cat-Sx		
66984	EXTRACAPSULAR CATARACT REMOVAL	\$ 2,000.00	\$ 860.81	Cat-Sx	1,532	1,686
66985	SECONDARY IOL	\$ 2,000.00	\$ 860.81	Cat-Sx		
66986	EXCHANGE OF IOL	\$ 2,000.00	\$ 860.81	Cat-Sx		
67031	YAG VITREOLYSIS	\$ 600.00	\$ 220.59	Laser-Ret		
67145	PROPHYLAXIS RET DETACH-PHOTOACOAG	\$ 600.00	\$ 365.42	Laser-Ret	19	21
67210	PHOTOACOAG LASER RETINA LESION	\$ 600.00	\$ 219.09	Laser-Ret		
65420	EXCISION OF PTERYGIUM w/o GRAFT	\$ 2,000.00	\$ 701.59	Oth-Sx		
65426	EXCISION OF PTERYGIUM w/ GRAFT	\$ 2,000.00	\$ 701.59	Oth-Sx	8	8
65930	REMOVAL BLOOD CLOT-ANT. SEGMENT	\$ 2,000.00	\$ 860.81	Oth-Sx		
66172	TRABECULOTOMY AB EXT	\$ 2,000.00	\$ 860.81	Glauc-Sx		
66711	CYCLOPHOTOACOAGULATION, ENDOSCOPIC (ECP)	\$ 2,000.00	\$ 860.81	Glauc-Sx	33	36
					1,968	2,165

*Source -published CMS ASC Fee Schedule-Palmetto-GBA Website.

6. A. Discuss how projected utilization rates will be sufficient to support the financial performance. Indicate when the project's financial breakeven is expected and demonstrate the availability of sufficient cash flow until financial viability is achieved. Provide copies of the balance sheet and income statement from the most recent reporting period of the institution and the most recent audited financial statements with accompanying notes, if applicable. For all projects, provide financial information for the corporation, partnership, or principal parties that will be a source of funding for the project. Copies must be inserted at the end of the application, in the correct alpha-numeric order and labeled as **Attachment Section B-Economic Feasibility-6A**. **NOTE: Publicly held entities only need to reference their SEC filings.**

RESPONSE: *Projected utilization rates will generate positive cash flow for the project in the first year of operation of \$264,969 and in the second year as well-\$343,766 with net operating margins of 27.30% in Year 1 and 29.83% in Year 2 according to the Projected Data Chart. The projected utilization reflects competitive charge rates (significantly less than HOPDs) and Medicare allowable reimbursement rates for cataract surgery are approx. 53% less than HOPD reimbursements.-\$1745 /cs HOPD-\$976/cs-ASC. The project is expected to provide sufficient cash flow and be financially viable once operations are initiated.*

See Financial Statements & other financial information included in Attachment Section B-Economic Feasibility-6A.

Net Operating Margin Ratio – Demonstrates how much revenue is left over after all the variable or operating costs have been paid. The formula for this ratio is: (Earnings before interest, Taxes, and Depreciation/Net Operating Revenue).

Utilizing information from the Historical and Projected Data Charts please report the net operating margin ratio trends in the following table:

RESPONSE: *The Historical Data Chart represents summarized financial information from the Eye Care Centers, PLLC dba Tennessee Eye Care, the private eye care medical practice that is owned by Drs. Browning & Lowrance and three optometrists("TEC"). In addition to the provider owners, the TEC also currently employs one Board Certified ophthalmologist and four optometrists. Drs.*

Browning & Lowrance are the participating member-owners of the Applicant and the Historical Data Chart is provided for information purposes. Net Operating Margin Ratio is Not Applicable-N/A for the Historical Data Chart.

The Net Operating Margin Ratio Trends are positive.:

Year	2nd Year previous to Current Year	1st Year previous to Current Year	Current Year	Projected Year 1	Projected Year 2
Net Operating Margin Ratio	N/A	N/A	N/A	27.30%	29.83%

- B. Capitalization Ratio (Long-term debt to capitalization) – Measures the proportion of debt financing in a business's permanent (Long-term) financing mix. This ratio best measures a business's true capital structure because it is not affected by short-term financing decisions. The formula for this ratio is: (Long-term debt/Total Equity (Net assets)) x 100).

For the entity (applicant and/or parent company) that is funding the proposed project please provide the capitalization ratio using the most recent year available from the funding entity's audited balance sheet, if applicable. The Capitalization Ratios are not expected from outside the company lenders that provide funding.

RESPONSE: *Not Applicable-NA. The Applicant is a newly established entity. Bank financing from commercial bank will fund the entire initial capital, equipment & working capital costs for the project.*

7. Discuss the project's participation in state and federal revenue programs including a description of the extent to which Medicare, TennCare/Medicaid and medically indigent patients will be served by the project. Additionally, report the estimated gross operating revenue dollar amount and percentage of projected gross operating revenue anticipated by payor classification for the first year of the project by completing the table below.

RESPONSE: *Applicant will fully participate in all Medicare, TennCare/Medicaid programs and will serve medically indigent patients. Applicant currently anticipates Projected Gross Operating Revenue of 61.31% from Medicare/Medicare Managed Care patients and 6.25% from TennCare/Medicaid patients as a % of the Total Project in Year 1. See Table Below*

Applicant's Projected Payor Mix, Year 1

Payor Source	Projected Gross Operating Revenue	As a % of total
Medicare/Medicare Managed Care	\$2,074,080	61.31%
TennCare/Medicaid	\$211,434	6.25%
Commercial/Other Managed Care	\$831,865	24.59%
Self-Pay	\$231,055	6.83%
Charity Care	\$34,506	1.02%
Other (Specify) _____		
Total	\$3,382,940	100.00%

8. Provide the projected staffing for the project in Year 1 and compare to the current staffing for the most recent 12-month period, as appropriate. This can be reported using full-time equivalent (FTEs) positions for these positions. Additionally, please identify projected salary amounts by position classifications and compare the clinical staff salaries to prevailing wage patterns in the proposed service area as published by the Department of Labor & Workforce Development and/or other documented sources.

RESPONSE: *See Schedules below.*

Eye Surgery Center of Lenoir City

STAFFING ANALYSIS & PLAN

PERSONNEL:	STATUS	FTE	ESCK HRLY RATE	HRS/ DAY	DAYS/ WK	WKS/ YR	HRS/ YR	PROJECTED COST	
								YR 1	YR 2
RN-Admin & Circulator	FTE	1.00	\$ 32.00	8	5.00	52	2,080	\$ 66,560.00	\$ 68,556.80
RN/Pre-Op/Infection Control	Shared-PT	0.60	\$ 28.00	8	3.00	52	1,248	\$ 34,944.00	\$ 35,992.32
RN/PACU	Shared-PT	0.60	\$ 28.00	8	3.00	52	1,248	\$ 34,944.00	\$ 35,992.32
Surgical Scrub Tech	Shared-PT	0.60	\$ 18.00	8	3.00	52	1,248	\$ 22,464.00	\$ 23,137.92
Surgical Scrub Tech	Shared-PT	0.60	\$ 18.00	8	3.00	52	1,248	\$ 22,464.00	\$ 23,137.92
Direct Patient Care-FTE		3.40					7,072	\$ 181,376.00	\$ 186,817.28
Registration & Medical Records	FTE	1.00	\$ 15.00	8	5.00	52	2,080	\$ 31,200.00	\$ 32,136.00
Billing & Insurance-Administration	FTE	1.00	\$ 18.00	8	5.00	52	2,080	\$ 37,440.00	\$ 38,563.20
Non-Patient Care-FTE	-	2.00					4,160	\$ 68,640.00	\$ 70,699.20
Total FTE Equivalents	-	5.40						\$ 250,016.00	\$ 257,516.48
Staffing Taxes & Benefit Cost @	20%							\$ 50,003.20	\$ 51,503.30
*Projected Increase in Wages @ 3%/YR								TOTAL	\$ 300,019.20 \$ 309,019.78

Schedule of Proposed Compensation by Job Discipline Eye Surgery Center of Lenoir City

Source: TN Dept of Labor & Workforce Dev. Div Emp. Sec. LMI-Knoxville MSA 2017					
PERSONNEL/Job Discipline:	STATUS	ESCK HRLY RATE	Entry Level HRLY RATE	Median HRLY RATE	Experienced HRLY RATE
RN-Admin & Circulator	FTE	\$ 32.00	\$ 20.74	\$ 26.10	\$ 28.80
RN/Pre-Op/Infection Control	FTE	\$ 32.00	\$ 20.74	\$ 26.10	\$ 28.80
RN/PACU	FTE	\$ 28.00	\$ 20.55	\$ 26.10	\$ 28.80
Surgical Scrub Tech	Shared-PT	\$ 18.00	\$ 15.29	\$ 18.52	\$ 20.20
Surgical Scrub Tech	Shared-PT	\$ 18.00	\$ 15.29	\$ 18.52	\$ 20.20
Surgical Scrub Tech	Shared-PT	\$ 18.00	\$ 15.29	\$ 18.52	\$ 20.20
Registration & Medical Records	FTE	\$ 15.00	\$ 11.27	\$ 13.79	\$ 15.95
Billing & Insurance-Administration	Shared-PT	\$ 18.00	\$ 12.23	\$ 14.88	\$ 16.95

9. Describe all alternatives to this project which were considered and discuss the advantages and disadvantages of each alternative including but not limited to:
 - A. Discuss the availability of less costly, more effective and/or more efficient alternative methods of providing the benefits intended by the proposal. If development of such alternatives is not practicable, justify why not, including reasons as to why they were rejected.
 - B. Document that consideration has been given to alternatives to new construction, e.g., modernization or sharing arrangements.

RESPONSE: *The Applicant considered alternatives of renovating an existing building in another area of Loudon County but determined that a newly-constructed facility for their Lenoir City-Tennessee Eye Care clinic designed to address the long term comprehensive eye care needs and convenience for their patients requiring surgery was the best alternative. The ASTC site location in Lenoir City housed within the same building as the TEC practice provides efficiency and the best accessibility and convenience to the physicians and their patients. This Facility will allow the physicians to maximize their productivity in a quality cost-effective environment which can be constructed for a realizable cost. The Applicant believes this specialized ophthalmic ASTC will provide more long-term value to the patients and the physicians. There are no existing ophthalmic ASTCs or hospital facilities within the service area that can accommodate the total needs of the physicians and their patients. Applicant acknowledges that the Tennessee Eye Care of Lenoir City-clinic and the proposed ASTC will operate as separate entities and comply with CMS-Medicare guidelines and regulations with respect to separation of patient care.*

CONTRIBUTION TO THE ORDERLY DEVELOPMENT OF HEALTH CARE

1. List all existing health care providers (i.e., hospitals, nursing homes, home care organizations, etc.), managed care organizations, alliances, and/or networks with which the applicant currently has or plans to have contractual and/or working relationships, that may directly or indirectly apply to the project, such as, transfer agreements, contractual agreements for health services.

RESPONSE: *The Applicant will seek a patient transfer agreement with the Covenant Health Hospital system with which the physicians currently have admitting privileges. This will include the Fort Loudoun Medical Center Hospital located at 550 Fort Loudoun Medical Center Dr, Lenoir City, TN 37772, which is approx. 1.3 miles and 3 minutes driving time from the proposed ASTC project site on Creekwood Park Blvd in Lenoir City, TN.*

2. Describe the effects of competition and/or duplication of the proposal on the health care system, including the impact to consumers and existing providers in the service area. Discuss any instances of competition and/or duplication arising from your proposal including a description of the effect the proposal will have on the utilization rates of existing providers in the service area of the project.

RESPONSE:

- A. **Positive Effects-** *The proposed project will not adversely affect the existing facilities currently providing eye care surgical services and will greatly enhance accessibility for the patients of the four medical practices. This will contribute to the optimization of quality surgical care and outcomes for the elderly population within the Applicant's Service Area. The Service Area needs additional surgical capacity for ophthalmic surgical cases which this project can provide. There are no existing ophthalmic ASTCs or multi-specialty ASTCs performing eye cases in the primary service area. The addition of the proposed facility will have a positive effect in addressing the growing eye care needs of the aging population and allow the TEC group physicians to maximize their productivity.*
- B. **Negative Effects** *No negative effects will be realized from the approval of this proposed Facility.*

3. A. Discuss the availability of and accessibility to human resources required by the proposal, including clinical leadership and adequate professional staff, as per the State of Tennessee licensing requirements and/or requirements of accrediting agencies, such as the Joint Commission and Commission on Accreditation of Rehabilitation Facilities.

RESPONSE: *The Applicant has strong medical leadership through its experienced Board Certified physicians and they have developed long-standing relationships within the East Tennessee medical community. The Applicant should have no problem obtaining adequate professional staff. There is also existing, experienced professional staff that will be available through the TEC medical eye care practice.*

Available Professional Anesthesia staff has been identified. See Letter from CRNA in Attachment-Section Contribution to the Orderly Development of Healthcare Clinical Leadership and Human Resources.

The CVs for the physician owners of the medical practices have been included in this Attachment Section as well.

The Applicant has identified Healthcare Consultant, Stephen H. Rudolph, CPA-Eyecare Resources, LLC to assist the Medical Staff and Professional Staff with the licensing and accreditation process-Background information has been included in this Attachment Section- Contribution to the Orderly Development of Healthcare Clinical Leadership and Human Resources.

- B. Verify that the applicant has reviewed and understands all licensing and/or certification as required by the State of Tennessee and/or accrediting agencies such as the Joint Commission for medical/clinical staff. These include, without limitation, regulations concerning clinical leadership, physician supervision, quality assurance policies and programs, utilization review policies and programs, record keeping, clinical staffing requirements, and staff education.

RESPONSE: *The Applicant so verifies.*

- C. Discuss the applicant's participation in the training of students in the areas of medicine, nursing, social work, etc. (e.g., internships, residencies, etc.).

RESPONSE: *The Applicant does not anticipate training of students (internships and residency programs) due to the limited size and design of the Facility.*

4. Identify the type of licensure and certification requirements applicable and verify the applicant has reviewed and understands them. Discuss any additional requirements, if applicable. Provide the name of the entity from which the applicant has received or will receive licensure, certification, and/or accreditation.

RESPONSE: *The Applicant verifies that it has reviewed and understands the requirements for establishing a new Single Specialty- Ambulatory Surgical Treatment Center (ASTC) limited to ophthalmic procedures and will seek licensure from the Board for Licensing Healthcare Facilities-Tennessee Department of Health, certification for participation in Medicare and Medicaid/TennCare programs, and accreditation from the American Association for Ambulatory Healthcare(AAAHC).The Applicant will apply for the following:*

Licensure: Board for Licensing Healthcare Facilities-Tennessee Department of Health for Single Specialty- Ambulatory Surgical Treatment Center (ASTC) limited to ophthalmic procedures

Certification Type (e.g. Medicare SNF, Medicare LTAC,etc):

Medicare Certification from CMS and TennCare Certification from

TDH as Ambulatory Surgery Center limited to Ophthalmology

(Single Specialty)

Accreditation (i.e., Joint Commission, CARF, etc.): American Association for Ambulatory Healthcare.

(AAAHC) Accreditation as Ambulatory Surgery Center limited to

Ophthalmology (Single Specialty)

- A. If an existing institution, describe the current standing with any licensing, certifying, or accrediting agency. Provide a copy of the current license of the facility and accreditation designation.

RESPONSE: *Not Applicable (NA)*

- B. For existing providers, please provide a copy of the most recent statement of deficiencies/plan of correction and document that all deficiencies/findings have been corrected by providing a letter from the appropriate agency. **RESPONSE:** *Not Applicable (NA)*

- C. Document and explain inspections within the last three survey cycles which have resulted in any of the following state, federal, or accrediting body actions: suspension of admissions, civil monetary penalties, notice of 23-day or 90-day termination proceedings from Medicare/Medicaid/TennCare, revocation/denial of accreditation, or other similar actions. **RESPONSE:** *Not Applicable (NA)*

- 1) Discuss what measures the applicant has or will put in place to avoid similar findings in the future. **RESPONSE:** *Not Applicable (NA)*

5. Respond to all of the following and for such occurrences, identify, explain and provide documentation:

A. Has any of the following:

- 1) Any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant);
- 2) Any entity in which any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest of more than 5%; and/or
- 3) Any physician or other provider of health care, or administrator employed by any entity in which any person(s) or entity with more than 5% ownership in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest of more than 5%.

B. Been subjected to any of the following:

- 1) Final Order or Judgment in a state licensure action; **RESPONSE:** *Yes. See Attachment-Section C. Contribution to Orderly Development which includes Practitioner Profile Data, Licensure Verification & Agreed Citation from State of Tennessee Department of Health-Bureau of Health Licensure and Regulation for Thomas Browning, MD related to insufficient continuing education credits maintained in 2008. The terms of the Agreed Citation regarding insufficient continuing education credits and additional required continuing education credits were subsequently met along with payment of the assessed civil penalty of \$480.*
- 2) Criminal fines in cases involving a Federal or State health care offense; **RESPONSE:** *No*
- 3) Civil monetary penalties in cases involving a Federal or State health care offense;
RESPONSE: *Yes- See response in Section B. 1).above.*
- 4) Administrative monetary penalties in cases involving a Federal or State health care offense;
RESPONSE: *No*
- 5) Agreement to pay civil or administrative monetary penalties to the federal government or any state in cases involving claims related to the provision of health care items and services; and/or **RESPONSE:** *No*
- 6) Suspension or termination of participation in Medicare or Medicaid/TennCare programs.
RESPONSE: *No*
- 7) Is presently subject of/to an investigation, regulatory action, or party in any civil or criminal action of which you are aware. **RESPONSE:** *No*
- 8) Is presently subject to a corporate integrity agreement. **RESPONSE:** *No*

6. Outstanding Projects: **RESPONSE:** *Thomas Browning, MD & Matthew Lowrance DO have ownership in the Eye Surgery Center of Knoxville ,LLC located at 7739 Dannaher Drive, Powell, TN 37849. which has begun operations as a licensed & Medicare certified single specialty ophthalmic ASTC in Knox County, TN.*

A. Complete the following chart by entering information for each applicable outstanding CON by applicant or share common ownership; and

<u>Outstanding Projects</u>					
<u>CON Number</u>	<u>Project Name</u>	<u>Date Approved</u>	<u>*Annual Progress Report(s)</u>		<u>Expiration Date</u>
			<u>Due Date</u>	<u>Date Filed</u>	
CN1611—038A	Eye Surgery Center of Knoxville, LLC	2-22-2017	7-13-2018	7-13--2018	4-1-2019
	7739 Dannaher Drive				
	Powell, TN 37849 (Knox Cty)				

* Annual Progress Reports – HSDA Rules require that an Annual Progress Report (APR) be submitted each year. The APR is due annually until the Final Project Report (FPR) is submitted (FPR is due within 90 ninety days of the completion and/or implementation of the project). Brief progress status updates are requested as needed. The project remains outstanding until the FPR is received.

B. Provide a brief description of the current progress, and status of each applicable outstanding CON. **RESPONSE:** *Final Cost Report has been filed for Eye Surgery Center of Knoxville, LLC -CON#. State of TN-Office of Healthcare Facilities initially approved the facility and issued Licensure #232 as single specialty Ophthalmic ASTC. Permanent licensure was approved and ratified by the State of TN Licensing Board at their June 7th & 8th meetings. The CMS-Medicare initial certification survey was completed and Medicare Certification for the ASTC was received on May 4, 2018-ASC Medicare ID# 44C0001194 (with no deficiencies)*

7. Equipment Registry – For the applicant and all entities in common ownership with the applicant.

A. Do you own, lease, operate, and/or contract with a mobile vendor for a Computed Tomography scanner (CT), Linear Accelerator, Magnetic Resonance Imaging (MRI), and/or Positron Emission Tomographer (PET)? No-Not Applicable (NA)

B. If yes, have you submitted their registration to HSDA? If you have, what was the date of submission? Not Applicable (NA)

C. If yes, have you submitted your utilization to Health Services and Development Agency? If you have, what was the date of submission? Not Applicable (NA)

QUALITY MEASURES

Please verify that the applicant will report annually using forms prescribed by the Agency concerning continued need and appropriate quality measures as determined by the Agency pertaining to the certificate of need, if approved.

RESPONSE: *The Applicant so verifies.*

SECTION C: STATE HEALTH PLAN QUESTIONS

T.C.A. §68-11-1625 requires the Tennessee Department of Health's Division of Health Planning to develop and annually update the State Health Plan (found at <http://www.tn.gov/health/topic/health-planning>). The State Health Plan guides the State in the development of health care programs and policies and in the allocation of health care resources in the State, including the Certificate of Need program. The 5 Principles for Achieving Better Health are from the State Health Plan's framework and inform the Certificate of Need program and its standards and criteria.

Discuss how the proposed project will relate to the 5 Principles for Achieving Better Health found in the State Health Plan.

1. The purpose of the State Health Plan is to improve the health of the people of Tennessee.

RESPONSE: *The approval of this proposed facility by HSDA is consistent with State Health Plan to improve healthcare by providing a cost-effective quality care environment to address the significant increases in age-related eye diseases for the aging population*

2. People in Tennessee should have access to health care and the conditions to achieve optimal health.

RESPONSE: *This project will provide better accessibility for the increasing elderly 65+ yrs. patient population in the Loudon and Roane County primary service area. The need for age-related eye surgery continues to rise and the proposed facility will significantly improve the efficiency of the two ophthalmic specialists, maximize their productivity, and increase overall accessibility of quality care to the service area. There are currently no existing eye specialty or multi-specialty ASTCs providing eye services within the primary service area. The Hospital Outpatient/Inpatient facilities currently utilized by the specialists are not cost-effective, accessibility is limited and additional ASTC surgical capacity is necessary to address the need.*

3. Health resources in Tennessee, including health care, should be developed to address the health of people in Tennessee while encouraging economic efficiencies.

RESPONSE: *With anticipated shortages in ophthalmic providers in the near term, it is critical to enable surgical efficiencies through specialized facilities that can address increasing patient volumes in a cost-effective environment. This project is cost effective and would provide a valuable resource for both the physicians and the patients they serve in the Loudon & Roane County-Tennessee service area.*

4. People in Tennessee should have confidence that the quality of health care is continually monitored and standards are adhered to by providers.

RESPONSE: *The TEC medical eye care practice and the specialists participating in this project are well*

established in the East Tennessee area. The TEC practice has been providing quality eye care and surgery for 30+ years. The two ophthalmic surgeons are both Board-certified and both physicians are fellowship trained as subspecialists in medical retina. The Applicant's group is committed to excellence and will seek accreditation from Accreditation Association of Ambulatory Health Care (AAAHC) and will maintain the highest degree in standard of care for the patients they serve within the Facility.

5. The state should support the development, recruitment, and retention of a sufficient and quality health workforce.

RESPONSE: *The Facility will not have any major effect on the health workforce other than to improve the efficiencies and provide an additional cost effective environment through which the work force participates.*

PROOF OF PUBLICATION

Attach the full page of the newspaper in which the notice of intent appeared with the mast and dateline intact or submit a publication affidavit from the newspaper that includes a copy of the publication as proof of the publication of the letter of intent.

RESPONSE: *See Publication Affidavit from Knoxville News Sentinel with copy of the publication as Proof of the Publication of the letter of intent-Attachment.*

NOTIFICATION REQUIREMENTS

(Applies only to Nonresidential Substitution-Based Treatment Centers for Opiate Addiction)

Note that T.C.A. §68-11-1607(c)(9)(A) states that "...Within ten (10) days of the filing of an application for a nonresidential substitution-based treatment center for opiate addiction with the agency, the applicant shall send a notice to the county mayor of the county in which the facility is proposed to be located, the state representative and senator representing the house district and senate district in which the facility is proposed to be located, and to the mayor of the municipality, if the facility is proposed to be located within the corporate boundaries of a municipality, by certified mail, return receipt requested, informing such officials that an application for a nonresidential substitution-based treatment center for opiate addiction has been filed with the agency by the applicant."

Failure to provide the notifications described above within the required statutory timeframe will result in the voiding of the CON application.

Please provide documentation of these notifications. **RESPONSE:** *Not Applicable-N/A*

DEVELOPMENT SCHEDULE

T.C.A. §68-11-1609(c) provides that a Certificate of Need is valid for a period not to exceed three (3) years (for hospital projects) or two (2) years (for all other projects) from the date of its issuance and after such time shall expire; provided, that the Agency may, in granting the Certificate of Need, allow longer periods of validity for Certificates of Need for good cause shown. Subsequent to granting the Certificate of Need, the Agency may extend a Certificate of Need for a period upon application and good cause shown, accompanied by a non-refundable reasonable filing fee, as prescribed by rule. A Certificate of Need which has been extended shall expire at the end of the extended time period. The decision whether to grant such an extension is within the sole discretion of the Agency, and is not subject to review, reconsideration, or appeal.

1. Complete the Project Completion Forecast Chart on the next page. If the project will be completed in multiple phases, please identify the anticipated completion date for each phase.

RESPONSE: *See Project Completion Forecast Chart on the next page.*

2. If the response to the preceding question indicates that the applicant does not anticipate completing the project within the period of validity as defined in the preceding paragraph, please state below any request for an extended schedule and document the "good cause" for such an extension. **RESPONSE:** *Not Applicable-N/A. The Applicant anticipates completing the project within the period of validity.*

PROJECT COMPLETION FORECAST CHART

Assuming the Certificate of Need (CON) approval becomes the final HSDA action on the date listed in Item 1. below, indicate the number of days from the HSDA decision date to each phase of the completion forecast.

Phase	<u>Days Required</u>	<u>Anticipated Date</u> [Month/Year]
1. Initial HSDA decision date		Oct-2018
2. Architectural and engineering contract signed	5	Oct-2018
3. Construction documents approved by the Tennessee Department of Health	75	Jan-2019
4. Construction contract signed	80	Jan-2019
5. Building permit secured	85	Jan-2019
6. Site preparation completed	85	Jan-2019
7. Building construction commenced	86	Jan-2019
8. Construction 40% complete	116	Feb-2019
9. Construction 80% complete	146	Mar-2019
10. Construction 100% complete (approved for occupancy)	173	Apr-2019
11. *Issuance of License	203	May-2019
12. *Issuance of Service	223	June-2019
13. Final Architectural Certification of Payment	253	July-2019
14. Final Project Report Form submitted (Form HR0055)	313	Sep-2019

*For projects that **DO NOT** involve construction or renovation, complete Items 11 & 12 only.

NOTE: If litigation occurs, the completion forecast will be adjusted at the time of the final determination to reflect the actual issue date

2018 JUL 10 PM 2:49

AFFIDAVIT

STATE OF Tennessee

COUNTY OF Knox

Stephen H. Rudolph, being first duly sworn, says that he is the applicant named in this application or its lawful agent, that this project will be completed in accordance with the application, that the applicant has read the directions to this application, the Rules of the Health Services and Development Agency, and T.C.A. §68-11-1601, *et seq.*, and that the responses to this application or any other questions deemed appropriate by the Health Services and Development Agency are true and complete.

Stephen H. Rudolph - consultant
SIGNATURE/TITLE

Sworn to and subscribed before me this 11 day of July, 2018 a Notary
(Month) (Year)

Public in and for the County/State of Knox County / State of TN.



Jessica Slade
NOTARY PUBLIC

My commission expires 4/4, 2022.
(Month/Day) (Year)

APPENDIX

Letter of Intent

Notification of Intent Publication

Miscellaneous



**State of Tennessee
Health Services and Development Agency**

Andrew Jackson Building, 9th Floor

502 Deaderick Street

Nashville, TN 37243

www.tn.gov/hsda

Phone: 615-741-2364

Fax: 615-741-9884

LETTER OF INTENT

The Publication of Intent is to be published in the **Knoxville News-Sentinel** which is a newspaper
(Name of Newspaper)

of general circulation in

Loudon County, Tennessee, on or before
(County)

July 10th, 2018,
(Month / day) (Year)

for one day.

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with T.C.A. § 68-11-1601 *et seq.*, and the Rules of the Health Services and Development Agency, that:

Eye Surgery Center of Lenoir City,

(Name of Applicant)

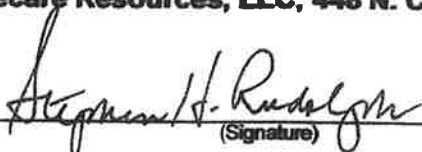
a proposed ambulatory surgical treatment center to be

(Facility Type-Existing)

owned and managed by Eye Surgery Center of Lenoir City, LLC (a Limited Liability Company) intends to file an application for a Certificate of Need for the establishment of a single specialty ophthalmic ambulatory surgery center at a site adjacent to the owner's office and medical clinic located at 5491 Creekwood Park Blvd in Lenoir City, Loudon County, TN, 37772. The estimated cost for the project is approximately \$2,183,350.00 and the facility will seek licensure as an ambulatory surgical treatment center limited to ophthalmology, providing eye and related laser procedures. The facility will have two (2) operating rooms. The project does not contain major medical equipment, initiate or discontinue any other health service, and will not affect any licensed bed complements.

The anticipated date of filing the application is **July 13, 2018**.

The contact person for this project is **Stephen H. Rudolph, CPA** who may be reached at **Eyecare Resources, LLC, 448 N. Cedar Bluff Rd-Ste 255, Knoxville, TN 37923-3612; 901-219-0173**.


(Signature)

7/9/18
(Date)

shrudolphsr@yahoo.com
(E-mail Address)

The Letter of Intent must be filed in triplicate and received between the first and the tenth day of the month. If the last day for filing is a Saturday, Sunday or State Holiday, filing must occur on the preceding business day. File this form at the following address:

**Health Services and Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, Tennessee 37243**

The published Letter of Intent must contain the following statement pursuant to T.C.A. § 68-11-1607(c)(1). (A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.



**State of Tennessee
Health Services and Development Agency**

Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, TN 37243

www.tn.gov/hsda

Phone: 615-741-2364

Fax: 615-741-9884

AD to be published on Tuesday- July 10th, 2018 in Knoxville News Sentinel

PUBLICATION OF INTENT

The following shall be published in the "Legal Notices" section of the newspaper in a space no smaller than two (2) columns by two (2) inches.

NOTIFICATION OF INTENT TO APPLY FOR A CERTIFICATE OF NEED

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with T.C.A. § 68-11-1601 *et seq.*, and the Rules of the Health Services and Development Agency, that Eye Surgery Center of Lenoir City, a proposed ambulatory surgical treatment center to be owned and managed by Eye Surgery Center of Lenoir City, LLC (a Limited Liability Company) intends to file an application for a Certificate of Need for the establishment of a single specialty ophthalmic ambulatory surgery center at a site adjacent to the owner's office and medical clinic located at 5491 Creekwood Park Blvd. in Lenoir City, Loudon County, TN, 37772. The estimated cost for the project is approximately \$2,183,350.00 and the facility will seek licensure as an ambulatory surgical treatment center limited to ophthalmology, providing eye and related laser procedures. The facility will have two (2) operating rooms. The project does not contain major medical equipment, initiate or discontinue any other health service, and will not affect any licensed bed complements.

The anticipated date of filing the application is July 13, 2018.

The contact person for this project is Stephen H. Rudolph, CPA who may be reached at Eyecare Resources, LLC, 448 N. Cedar Bluff Rd-Ste 255, Knoxville, TN 37923-3612; 901-219-0173.

Upon written request by interested parties, a local Fact-Finding public hearing shall be conducted. Written requests for hearing should be sent to:

Health Services and Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, Tennessee 37243

The published Letter of Intent must contain the following statement pursuant to T.C.A. § 68-11-1607(c)(1). (A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.

Attn:

To: EYECARE RESOURCES, LLC

(Advertising) NOTIFICATION OF INTENT TO APPLY FOR (Ref No: 2062750)

P.O.#:

PUBLISHER'S AFFIDAVIT

State of Tennessee }

s.s

County of Knox }

Before me, the undersigned, a Notary Public in and for said county, this day personally came Natalie Zollar first duly sworn, according to law, says that he/she is a duly authorized representative of *The Knoxville News-Sentinel*, a daily newspaper published at Knoxville, in said county and state, and that the advertisement of:

(The Above-Referenced)

of which the annexed is a copy, was published in said paper on the following date(s):

07/10/2018

and that the statement of account herewith is correct to the best of his/her knowledge, information, and belief.

Natalie Zollar

Subscribed and sworn to before me this July 10, 2018

Karol E Kangas

Notary Public

My commission expires _____ 20____



NOTIFICATION OF INTENT TO APPLY FOR A CERTIFICATE OF NEED

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with T.C.A. § 68-11-1601 et seq., and the Rules of the Health Services and Development Agency, that Eye Surgery Center of Lenoir City, a proposed ambulatory surgical treatment center to be owned and managed by Eye Surgery Center of Lenoir City, LLC (a Limited Liability Company) intends to file an application for a Certificate of Need for the establishment of a single specialty ophthalmic ambulatory surgery center at a site adjacent to the owner's office and medical clinic located at 5491 Creekwood Park Blvd. in Lenoir City, Loudon County, TN, 37772. The estimated cost for the project is approximately \$2,183,350.00 and the facility will seek licensure as an ambulatory surgical treatment center limited to ophthalmology, providing eye and related laser procedures. The facility will have two (2) operating rooms. The project does not contain major medical equipment, initiate or discontinue any other health service, and will not affect any licensed bed complements.

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Cashier's Check



First Citizens Bank

First-Citizens Bank & Trust Company
Raleigh, North Carolina

66-1252/531

Branch No. 320

0500347821

Date July 11, 2010

Pay to the
order of

Health Services Development Agency

\$ 15,000.00

****Fifteen Thousand Dollars and 00/100****

Dollars

Notice To Customers
The purchase of an Indemnity Bond or an Insurance Bond may be required before an official
check of this bank will be replaced or refunded in the event it is lost, misplaced or stolen.

Remitter

05-10050M (02/17) CON Application Fee- Eye Surgery Center of Lenoir City, LLC

S. H. W.

MP

⑈0500347821⑈ ⑆053112521⑆223980198101⑈994990

Attachment Section A-4A

Ownership-Legal Entity

OWNERSHIP STRUCTURE-ORGANIZATIONAL CHART

EYE CARE CENTERS, PLLC-dba Tennessee Eye Care (TEC)-Medical Practice

EYE SURGERY CENTER OF LENOIR CITY, LLC (ESCLC)-ASTC

DMT PROPERTIES, LLC (DMT)-Real Estate/Building Owner & Landlord

AFFILIATED MEDICAL PRACTICE ENTITY:

**Eye Care Centers, PLLC
dba Tennessee Eye Care**

Provider Owners:

	OWNERSHIP %
Thomas A. Browning, MD-Member	25.00%
Matthew D. Lowrance, DO-Member	25.00%
Sylvia Mende-Caulfield, OD-Member	16.66%
David N. Montgomery, OD-Member	16.67%
John M. Hunt, OD-Member	16.67%
	100.00%

Practice Locations:

**Eye Care Centers, PLLC dba
Tennessee Eye Care of Harriman**
1798 Roane State Hwy,
Harriman, TN 37748 (Roane Cty)

**Eye Care Centers, PLLC dba
Tennessee Eye Care of Lenoir City**
New Address-Opens Fall 2018
5491 Creekwood Park Blvd-Ste A
Lenoir City, TN 37772 (Loudon Cty)

Existing Address to Relocate in Fall 2018
149 Kelsey Ln
Ste #104
Lenoir City, TN 37772 (Loudon Cty)

**Eye Care Centers, PLLC dba
Tennessee Eye Care of Knoxville**
6354 Lonas Spring Drive
Knoxville, Tennessee 37909

Employed Providers:

Paul E. Wittke, MD
Heidi Herring, OD
Melissa Pfeffer, OD
Elissa Fleming, OD
Benjamin Herring, OD

PARTICIPATING OWNER & SURGEON IN ESCLC-ASTC:

Provider Owners:

	OWNERSHIP %
Thomas A. Browning, MD-Member	50.00%
Matthew D. Lowrance, DO-Mgr.Mem.	50.00%
	100.00%

Project Site Location:

Eye Surgery Center of Lenoir City, LLC
5491 Creekwood Park Blvd-Ste B
Lenoir City, TN 37772 (Loudon Cty)

PARTICIPATING Real Estate/Bldg Owners & Landlord

Provider Owners:

	OWNERSHIP %
David N. Montgomery, OD-Chief Mgr	33.34%
Thomas A. Browning, MD-Member	33.33%
Matthew D. Lowrance, DO-Member	33.33%
	100.00%

DMT Properties, LLC

149 Kelsey Ln
Ste #104
Lenoir City, TN 37772 (Loudon Cty)

Project Site Location:

5491 Creekwood Park Blvd
Lenoir City, TN 37772 (Loudon Cty)

**ACTIONS TAKEN BY WRITTEN CONSENT
OF THE MEMBERS OF
EYE SURGERY CENTER OF LENOIR CITY, LLC**

The undersigned, being all of the members of **EYE SURGERY CENTER OF LENOIR CITY, LLC**, a Tennessee limited liability company (the "Company"), acting pursuant to Section 48-249-405 of the Tennessee Revised Limited Liability Company Act, hereby consents to taking action without a meeting and takes the following organizational actions by written consent:

RESOLVED, that the Articles of Organization for the Company, which were filed with the Tennessee Secretary of State on February 8, 2017, and recorded in the Loudon County Register's Office, be, and they are hereby, adopted and accepted as the Articles of Organization for the Company and shall be filed in the Company's minute book.

RESOLVED, that the following persons are hereby elected to serve as officers of the Company in the capacity set forth below for the ensuing year or until such time as their successors are duly elected:

President	Matthew D. Lowrance, D.O.
Secretary-Treasurer	Thomas A. Browning, M.D.

RESOLVED, that the Company issue membership interests in the Company in the amounts and to the member listed below upon receipt by the Company from such member of the capital contribution listed below, it having been determined by the member that such consideration is fair and adequate:

Member	Percentage Interest	Capital Contribution
Matthew D. Lowrance, D.O.	50%	\$1,000.00
Thomas A. Browning, M.D.	50%	\$1,000.00

RESOLVED, that the officers of the Company be, and they are hereby, authorized and directed to authorize and complete all matters and take all actions necessary and proper for the Company to commence business and to pay all fees and expenses incident and necessary to the organization of the Company.

RESOLVED, that the President of the Company be, and she is hereby, authorized and directed to execute the Operating Agreement of the Company.

RESOLVED, that the President and Secretary of the Company are hereby authorized to open an account in the name of the Company at any banking institution they select. The officers of the Company are hereby authorized to execute the standard form resolution of such bank when such account is opened, and the resolution is incorporated herein by reference and shall be placed in the Company's minute book.

RESOLVED, that the undersigned hereby ratifies, adopts, and approves all actions taken and/or transactions entered into on behalf of the Company by the organizer and by the officers of the Company in connection with the formation and organization of the Company.

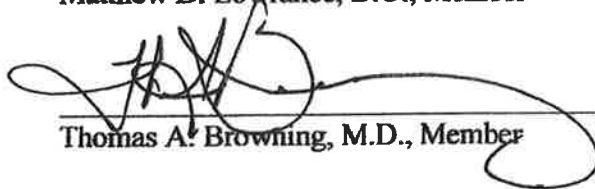
RESOLVED, that the Company operate on a calendar year commencing January 1 and terminating December 31 of each year.

The undersigned, being the members of the Company, by signing this consent, waive all notice of the date, time, and place of the initial meeting of the members of the Company and agrees to the transaction of the business set forth above by written consent of such members in lieu of such meeting. This consent shall be included in the Company's minute book.

Dated: March 1, 2017.

A handwritten signature in black ink, appearing to read "Matthew D. Lowrance", written over a horizontal line.

Matthew D. Lowrance, D.O., Member

A handwritten signature in black ink, appearing to read "Thomas A. Browning", written over a horizontal line.

Thomas A. Browning, M.D., Member



000887845

**ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY**

SS-4270

**Tre Hargett**
Secretary of State**Division of Business Services**
Department of State
State of Tennessee
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102
(615) 741-2286Filing Fee: \$50.00 per member
(minimum fee = \$300.00, maximum fee = \$3,000.00)

For Office Use Only

-FILED-

Control # 000887845

The Articles of Organization presented herein are adopted in accordance with the provisions of the Tennessee Revised Limited Liability Company Act.**1. The name of the Limited Liability Company is:** Eye Surgery Center of Lenoir City, LLC

(Note: Pursuant to the provisions of T.C.A. §48-249-106, each Limited Liability Company name must contain the words "Limited Liability Company" or the abbreviation "LLC" or "L.L.C.")

2. Name Consent: (Written Consent for Use of Indistinguishable Name)☐ This entity name already exists in Tennessee and has received name consent from the existing entity.**3. This company has the additional designation of:** None**4. The name and complete address of the Limited Liability Company's initial registered agent and office located in the state of Tennessee is:**STEPHEN H RUDOLPH
STE 255
448 N CEDAR BLUFF RD
KNOXVILLE, TN 37923-3612
KNOX COUNTY**5. Fiscal Year Close Month:** December**6. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date and time is:**
(none) (Not to exceed 90 days)**7. The Limited Liability Company will be:**☒ Member Managed☐ Manager Managed☐ Director Managed**8. Number of Members at the date of filing:** 2**9. Period of Duration:** Perpetual**10. The complete address of the Limited Liability Company's principal executive office is:**STEPHEN H. RUDOLPH
STE 104
149 KELSEY LN
LENOIR CITY, TN 37772-6442
LOUDON COUNTY



B0344-2140 02/08/2017 12:09 PM Received by Tennessee Secretary of State Tre Hargett

ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY

SS-4270



Tre Hargett
Secretary of State

Division of Business Services
Department of State
State of Tennessee
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102
(615) 741-2286

Filing Fee: \$50.00 per member
(minimum fee = \$300.00, maximum fee = \$3,000.00)

For Office Use Only

-FILED-

Control # 000887845

The name of the Limited Liability Company is: Eye Surgery Center of Lenoir City, LLC

11. The complete mailing address of the entity (if different from the principal office) is:

STEPHEN H. RUDOLPH
STE 104
149 KELSEY LN
LENOIR CITY, TN 37772-6442

12. Non-Profit LLC (required only if the Additional Designation of "Non-Profit LLC" is entered in section 3.)

- ☐ I certify that this entity is a Non-Profit LLC whose sole member is a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of the Tennessee Nonprofit Corporation Act and who is exempt from franchise and excise tax as not-for-profit as defined in T.C.A. §67-4-2004. The business is disregarded as an entity for federal income tax purposes.

13. Professional LLC (required only if the Additional Designation of "Professional LLC" is entered in section 3.)

- ☐ I certify that this PLLC has one or more qualified persons as members and no disqualified persons as members or holders.

Licensed Profession:

14. Series LLC (optional)

- ☐ I certify that this entity meets the requirements of T.C.A. §48-249-309(a) & (b)

15. Obligated Member Entity (list of obligated members and signatures must be attached)

- ☐ This entity will be registered as an Obligated Member Entity (OME) Effective Date: (none)
☐ I understand that by statute: THE EXECUTION AND FILING OF THIS DOCUMENT WILL CAUSE THE MEMBER(S) TO BE PERSONALLY LIABLE FOR THE DEBTS, OBLIGATIONS AND LIABILITIES OF THE LIMITED LIABILITY COMPANY TO THE SAME EXTENT AS A GENERAL PARTNER OF A GENERAL PARTNERSHIP. CONSULT YOUR ATTORNEY.

16. This entity is prohibited from doing business in Tennessee:

- ☐ This entity, while being formed under Tennessee law, is prohibited from engaging in business in Tennessee.

17. Other Provisions:

Electronic

Signature

Stephen H Rudolph

Printed Name

Agent-CPA

Title/Signer's Capacity

Feb 8, 2017 12:09PM

Date



Tre Hargett
Secretary of State

Division of Business Services
Department of State
State of Tennessee
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

Eye Surgery Center of Lenoir City, LLC
STEPHEN H. RUDOLPH
STE 104
149 KELSEY LN
LENOIR CITY, TN 37772-6442

February 8, 2017

Filing Acknowledgment

Please review the filing information below and notify our office immediately of any discrepancies.

SOS Control # :	000887845	Formation Locale:	TENNESSEE
Filing Type:	Limited Liability Company - Domestic	Date Formed:	02/08/2017
Filing Date:	02/08/2017 12:09 PM	Fiscal Year Close:	12
Status:	Active	Annual Report Due:	04/01/2018
Duration Term:	Perpetual	Image # :	B0344-2139
Managed By:	Member Managed		
Business County:	LOUDON COUNTY		

Document Receipt

Receipt # :	003103637	Filing Fee:	\$300.00
Payment-Credit Card - State Payment Center - CC #:	3694332687		\$300.00

Registered Agent Address:
STEPHEN H RUDOLPH
STE 255
448 N CEDAR BLUFF RD
KNOXVILLE, TN 37923-3612

Principal Address:
STEPHEN H. RUDOLPH
STE 104
149 KELSEY LN
LENOIR CITY, TN 37772-6442

Congratulations on the successful filing of your **Articles of Organization** for **Eye Surgery Center of Lenoir City, LLC** in the State of Tennessee which is effective on the date shown above. You must also file this document in the office of the Register of Deeds in the county where the entity has its principal office if such principal office is in Tennessee. Please visit the Tennessee Department of Revenue website (apps.tn.gov/bizreg) to determine your online tax registration requirements. If you need to obtain a Certificate of Existence for this entity, you can request, pay for, and receive it from our website.

You must file an Annual Report with this office on or before the Annual Report Due Date noted above and maintain a Registered Office and Registered Agent. Failure to do so will subject the business to Administrative Dissolution/Revocation.


Tre Hargett
Secretary of State



IRS DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
PHILADELPHIA PA 19255-0023

000916.733479.116704.9111 1 MB 0.423 530



EYE SURGERY CENTER OF LENOIR CITY
THOMAS A BROWNING MBR
149 KELSEY LN STE 104
LENOIR CITY TN 37772

Date of this notice: 02-13-2017

Employer Identification Number:
81-5283231

Form: SS-4

Number of this notice: CP 575 D

For assistance you may call us at:
1-800-829-4933

IF YOU WRITE, ATTACH THE
STUB OF THIS NOTICE.

10916

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 81-5283231. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear-off stub and return it to us.

Based on the information received from you or your representative, you must file the following form(s) by the date(s) shown.

Form 1065

03/15/2018

If you have questions about the form(s) or the due dates(s) shown, you can call us at the phone number or write to us at the address shown at the top of this notice. If you need help in determining your annual accounting period (tax year), see Publication 538, Accounting Periods and Methods.

We assigned you a tax classification based on information obtained from you or your representative. It is not a legal determination of your tax classification and is not binding on the IRS. If you want a legal determination of your tax classification, you may request a private letter ruling from the IRS under the guidelines in Revenue Procedure 2004-1, 2004-1 I.R.B. 1 (or superseding Revenue Procedure for the year at issue). Note: Certain tax classification elections can be requested by filing Form 8832, Entity Classification Election. See Form 8832 and its instructions for additional information.

A limited liability company (LLC) may file Form 8832, Entity Classification Election, and elect to be classified as an association taxable as a corporation. If the LLC is eligible to be treated as a corporation that meets certain tests and it will be electing S corporation status, it must timely file Form 2553, Election by a Small Business Corporation. The LLC will be treated as a corporation as of the effective date of the S corporation election and does not need to file Form 8832.

IMPORTANT REMINDERS:

- * Keep a copy of this notice in your permanent records. This notice is issued only one time and IRS will not be able to generate a duplicate copy for you. You may give a copy of this document to anyone asking for proof of your EIN.
- * Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
- * Refer to this EIN on your tax-related correspondence and documents.
- * Provide future officers of your organization with a copy of this notice.

Your name control associated with this EIN is EYES. You will need to provide this information, along with your EIN, if you file your returns electronically.

If you have questions about your EIN, you can contact us at the phone number or address listed at the top of this notice. If you write, please tear off the stub at the bottom of this notice and include it with your letter. Thank you for your cooperation.

(IRS USE ONLY)

575D

02-13-2017 EYES B 0509905994 SS-4



000916

Keep this part for your records.

CP 575 D (Rev. 1-2013)

Return this part with any correspondence
so we may identify your account. Please
correct any errors in your name or address.

CP 575 D

0509905994

Your Telephone Number Best Time to Call
() -

DATE OF THIS NOTICE: 02-13-2017
EMPLOYER IDENTIFICATION NUMBER: 81-5283231
FORM: SS-4 NOBOD

INTERNAL REVENUE SERVICE
PHILADELPHIA PA 19255-0023



EYE SURGERY CENTER OF LENOIR CITY
LLC
THOMAS A BROWNING MBR
149 KELSEY LN STE 104
LENOIR CITY TN 37772

OPERATING AGREEMENT OF EYE SURGERY CENTER OF LENOIR CITY, LLC

This Operating Agreement ("Agreement") is made effective as of March 1, 2017, as the Operating Agreement of Eye Surgery Center of Lenoir City, LLC, a Tennessee limited liability company, by and among each person named as a Member on Exhibit A attached hereto and all other persons who may hereafter become Members (as defined below).

SECTION 1 DEFINITIONS

As used in this Agreement, unless the context otherwise requires, the following terms shall have the meanings set forth below:

"Act" shall mean the Revised Tennessee Limited Liability Company Act, T.C.A. §§ 48-249-101 et seq., as amended from time to time.

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of any year after giving effect to the following adjustments: (A) credit to such Capital Account the sum of (1) any amount which such Member is obligated to restore to such Capital Account pursuant to any provision of this Agreement, plus (2) an amount equal to such Member's share of company minimum gain as determined under Regulation § 1.704-2(b)(2) and 1.704-2(d), plus (3) any amounts which such Member is deemed to be obligated to restore pursuant to Regulation § 1.704-1(b)(2)(ii)(c); and (B) debit to such Capital Account the items described in Regulation § 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

"Adverse Termination" means with respect to any Member and its Membership Interest, any of the following events, circumstances or occurrences:

- (a) The Member's Interest has been the subject of an Involuntary Transfer, as defined in Section 12.1(a) below;
- (b) A Member's divorce or separation whereby the decree of divorce or any written separation or property settlement agreement shall award, or result in the Transfer of, any portion of a Member's interest in the Company to such Member's spouse;
- (c) The Member is in Bankruptcy; or
- (d) The Member fails to meet the eligibility requirements set forth in Section 5 of this Agreement;
- (e) The Member is expelled pursuant to Section 14 of this Agreement; or
- (f) The Member's Membership Interest in the Company is otherwise terminated as provided for in the Act unless such termination is included in the definition of Non-Adverse Termination below.

"Affiliate" shall mean, as to a specific person or entity, a person or entity that directly or indirectly controls, is controlled by, or under common control with, such person or entity.

"Agreement" shall mean this Operating Agreement, as amended or restated from time to time.

Articles shall mean the Articles of Organization of the Company, as filed with the Secretary of State of Tennessee, as amended or restated from time to time.

Assignee shall mean a transferee of a Membership Interest who has not been admitted to the Company as a Member.

Bankruptcy means, as to any Member, the Member's taking of, acquiescing to the taking of, or becoming (voluntarily or involuntarily) the subject of, or any action seeking relief under, or advantage of, any applicable debtor relief, liquidation, receivership, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar law affecting the rights or remedies of creditors, as in effect from time to time.

Breach shall mean any breach by a Member of any of the terms of this Agreement that is not cured within thirty (30) days after delivery to such Member of a Notice of Breach.

Breaching Member shall mean any Member that has committed any Breach of this Agreement.

Capital Account shall mean, with respect to each Member, the Capital Account maintained for such Member to which there shall be credited such Member's Capital Contributions, such Member's distributive share of Net Profits, and any items in the nature of income or gain which are specially allocated pursuant to Section 8.5 or Section 8.6 hereof, and the amount of any Company liabilities assumed by such Member or which are secured by any Property distributed to such Member, and to which there shall be debited the amount of cash and the value of any Property distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Net Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 8.5 or Section 8.6 hereof, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

The foregoing and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations.

Capital Contribution shall mean, with respect to any Member, the amount of money and the value of any property (other than money) contributed to the Company with respect to the Membership Interest held by such Member. The initial Capital Contribution of each Member is set forth on Exhibit A.

Code shall mean the Internal Revenue Code of 1986, as amended from time to time.

Company shall mean Eye Surgery Center of Lenoir City, LLC, the limited liability company formed under this Agreement pursuant to the Act.

Company Minimum Gain has the same meaning as partnership minimum gain set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

Compensation shall mean amounts paid to or for the benefit of Members as compensation or benefits for services rendered by them in their capacities as members, officers, managers, directors or agents.

Disability under this Agreement shall occur as to a Member if a Majority in Interest of the Company's remaining Members, exclusive of the voting power held by the affected Member, so

determine. The remaining Members shall determine the issue of whether a Member is totally disabled promptly upon request by a Member or by the affected Member, or his personal representative. If the affected Member or his personal representative protests the determination made by the Members, then such Member shall be deemed to have a "Disability" if a disinterested licensed physician in the State of Tennessee reasonably acceptable to the remaining Members and the affected Member (or his personal representative) makes such a determination.

"Financial Rights" shall mean a Member's rights to share in profits and losses, distributions, to receive interim distributions and liquidation distributions as provided in this Agreement and the Act, and the right to transfer Financial Rights.

"Fiscal Year" shall mean the twelve-month period selected by the Company as its annual accounting period.

"Governance Rights" shall mean a Member's right to vote on one (1) or more matters, all of a Member's other rights as a member in the Company under the LLC Documents or the Act, other than Financial Rights, and the right to transfer the foregoing Governance Rights.

"LLC Documents" shall mean the Articles and this Agreement.

"Majority in Interest" shall mean the Percentage Interests in Governance Rights of one or more Members entitled to vote on a particular matter which (taken together if more than one) exceed fifty percent (50%) of either (i) the aggregate Percentage Interests in Governance Rights held by Members constituting a quorum that are entitled to vote on such matter, or (ii) such greater or lesser amount of the aggregate Percentage Interests in Governance Rights held by Members as the context of this Agreement may require.

"Member" shall mean each of the Members identified on Exhibit A attached hereto and made a part hereof by this reference who have executed this Agreement and each of the parties who may hereafter become Members.

"Member Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i) with respect to "partner minimum gain."

"Member Nonrecourse Debt" has the meaning set forth in Regulations Section 1.704-2(b)(4) for the phrase "partner nonrecourse debt."

"Membership Interest" shall mean, with respect to each Member, such Member's interest in the Company consisting of such Member's Financial Rights and Governance Rights.

"Net Cash Flow" means the gross cash proceeds of the Company less the portion thereof used to pay or establish reserves for all Company expenses (such expenses to include without limitation all Compensation), debt payments, capital improvements, replacements, and contingencies, all as determined by the Members. "Net Cash Flow" shall not be reduced by depreciation, amortization, or similar allowances.

"Net Profits" or "Net Losses," for each Fiscal Year or other period, means the net profit or net loss of the Company determined in accordance with the accounting methods in use by the Company as

reasonably determined by the Members, after taking into account the special allocation set forth in Sections 8.5 and 8.6.

"Non-Adverse Termination" means with respect to any Member and its Membership Interest: if a Member that is an individual dies, suffers a Disability, or otherwise becomes adjudged incompetent by any court.

"Nonrecourse Debt" has the meaning set forth in Regulations Sections 1.704-2(b)(3) and 1.752-1(a)(2).

"Nonrecourse Deductions" has the meaning set forth in Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

"Notice of Breach" shall mean a written notice describing a Member's Breach of this Agreement with reasonable specificity and executed by a Majority in Interest of all Members, excluding, however, the Percentage Interest in Governance Rights held by the Breaching Member.

"Officers" shall mean, collectively, the President, the Secretary-Treasurer, and each other officer, elected by the Members pursuant to Section 10.2 below. "Officer" shall mean, individually, any such person.

"Percentage Interest in Financial Rights" shall, with respect to any Member, be as set forth on Exhibit A hereto. If all or any portion of a Membership Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Percentage Interest in Financial Rights of the transferor to the extent it relates to the transferred Membership Interest and/or Financial Rights.

"Percentage Interest in Governance Rights" shall, with respect to any Member, be as set forth on Exhibit A hereto. For voting purposes, a Member's Percentage Interest in Governance Rights shall be deemed to be his Percentage Interest in Governance Rights in the Company as set forth on Exhibit A notwithstanding any special allocations to such Member pursuant to Sections 7 or 8. If all or any portion of a Membership Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Percentage Interest in Governance Rights of the transferor to the extent it relates to the transferred Membership Interest and/or Financial Rights.

"Prime Rate" shall mean the rate, denoted as such, published as the base rate on corporate loans at large U.S. money center commercial banks in The Wall Street Journal under "Money Rates" on the applicable date.

"Property" shall mean all property, real or personal, tangible or intangible, including money and any legal or equitable interest in property owned by the Company.

"Regulations" shall mean the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such regulations may be amended from time to time.

"Related Person" shall mean a person having a relationship to a Member that is described in §1.752-4(b) of the Regulations.

"Triggering Event" shall include a Member's Non-Adverse Termination or Adverse Termination.

"Year of Termination" shall mean the year in which the Company is liquidated and final distributions are made to Members and any other year in which the Company disposes of substantially all of its assets in a transaction made in the ordinary course of business.

SECTION 2 FORMATION AND TERM

Section 2.1 – Articles of Organization.

The date of formation and existence of the Company shall be February 8, 2017, the date of filing of the Articles with the Secretary of State of Tennessee.

Section 2.2 – Name

The name of the Company is Eye Surgery Center of Lenoir City, LLC. All business of the Company shall be conducted under that name or under any other name adopted by the Members in accordance with the Act.

Section 2.3 – Principal Place of Business

The principal place of business of the Company within the State of Tennessee shall be 149 Kelsey Lane, Suite 104, Lenoir City, Tennessee 37772. The Company may locate to, and have such other, places of business and registered offices as the Members shall, from time to time, deem advisable.

Section 2.4 – Term

The Company shall continue in perpetuity unless the Company shall be dissolved and its affairs wound up in accordance with the Act or this Agreement.

SECTION 3 PURPOSE OF THE COMPANY

Except as specifically limited in the Articles, the purpose of the Company is to operate an ambulatory surgery center (the "ASC") and all services related thereto in compliance with applicable federal and state laws, rules and regulations. In addition, the Company may engage in any and all other lawful business activities whatsoever, or which shall be conducive to or expedient for the protection or benefit of the Company, the ASC, or Company's Property, and the Company may exercise all powers necessary to, connected with, or incident to the accomplishment of any business that may lawfully be conducted by limited liability companies under the Act. The Members of the Company acknowledge that the Company has been structured to operate a single specialty ophthalmic ASC in compliance with the requirements of the applicable safe harbor for such single specialty ophthalmic ASCs under the federal Anti-Kickback Statute (42 CFR 1001.952(r)(2)) (the "AKS").

SECTION 4 ACCOUNTING, RECORDS, AND REPORTS

Section 4.1 – Books and Records

(a) The Company shall provide Members, and their agents and attorneys, access to its records at the principal executive office of the Company. The Company shall provide former Members, and their agents and attorneys, access to records for proper purposes pertaining to the periods during which they were Members. The foregoing right of access shall consist of the opportunity to inspect or copy records during ordinary business hours, if the Member, or its agent or attorney, gives the Company written notice of such demand at least five (5) business days before the date on which the Member, or its

agent or attorney, wishes to inspect or copy such records. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished under this Section 4.1.

(b) The Company shall furnish to a Member and to the personal representative of a deceased Member or Member under legal disability:

(i) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement, the Articles or the Act; and

(ii) On written demand, other information concerning the Company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) The Company shall keep, at its principal executive office or at another place or places within the United States determined by the Members:

(i) A current list of the full name and last known business, residence, or mailing address of each Member, and each officer, if any, of the Company together with the taxpayer identification number of each Member of the Company;

(ii) A current list of the full name and last known business, residence, or mailing address of each holder of Financial Rights of the Company, and a description of the Financial Rights held, together with the taxpayer identification number of each holder of Financial Rights of the Company;

(iii) A copy of the Articles of the Company and all amendments to the Articles;

(iv) A copy of the currently effective operating agreement of the Company;

(v) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;

(vi) Financial information sufficient to provide true and full information regarding the status of the business and financial condition of the Company for the three most recent fiscal years;

(vii) Records of all proceedings of the Members of the Company;

(viii) Any written consents obtained from the Members of the Company;

(ix) A statement of all contributions accepted by the Company under § 48-249-301 of the Act, the identity of the contributor, and the agreed value of each contribution;

(x) A copy of all contribution agreements created under § 48-249-301 to which the Company is bound; and

(xi) A copy of the Company's most recent annual report filed with the secretary of state under § 48-249-1017 of the Act.

Section 4.2 – Tax Information

Within ninety (90) days after the end of each Fiscal Year, without demand, the Company shall send to each owner of a Membership Interest and/or Financial Rights in the Company at any time during the Fiscal Year then ended such tax information as shall be reasonably required for such owner to comply with the requirements of either federal or state tax laws concerning such owner's Financial Rights, if any, including without limitation all information reasonably required for the preparation by such owner of his federal income tax return, and state income and other tax returns with regard to jurisdictions in which the Company is formed or qualified.

Section 4.3 – Tax Matters Member

The Tax Matters Member shall have all the powers provided to a tax matters partner in Sections 6221 through 6233 of the Code, including the specific power to extend the statute of limitations with respect to any matter which is attributable to any Company item or affecting any item pending before the Internal Revenue Service and to select the forum to litigate any tax issue or liability arising from Company items.

The Tax Matters Member shall be the Member designated as such on Exhibit A. The Tax Matters Member may resign his position by giving thirty (30) days written notice to all Members, whereupon the Members shall designate a new Tax Matters Member.

The Tax Matters Member shall be entitled to reimbursement for any and all reasonable expenses incurred with respect to any administrative and/or judicial proceedings affecting the Company.

SECTION 5 MEMBERSHIP INTERESTS; MEMBER ELIGIBILITY

Section 5.1 – Identity and Contribution. The (a) identity of all of the Members and the Membership Interests held by each, and (b) the amount of cash and a description and statement of the agreed value of any other property or services contributed for each Membership Interest, are as reflected on Exhibit A attached hereto and by this reference made a part hereof as if set forth fully herein, which shall be promptly amended as necessary, under the Act, to reflect any changes in such information.

Section 5.2 – Member Eligibility. Only individuals who meet the following requirements shall be eligible to become a member of Company:

(i) Such individual must be licensed to practice as a physician in the State of Tennessee specializing in ophthalmology;

(ii) At least 1/3 of such individual's medical practice income from all sources for the previous fiscal year or previous 12 month period must be derived from the individual's performance of procedures that require an ASC or hospital surgical setting in accordance with Medicare reimbursement rules; and

(iii) Such individual agrees to provide an attestation to Company which demonstrates that such individual discloses his membership interest in Company to any patients referred to the ASC by such individual or any group or entity controlled by such individual.

In no event shall any individual be admitted as a Member if the admission of such Member would, in the opinion of Company counsel, adversely affect the Company's ability to comply with the safe harbor for single specialty ASCs under the AKS.

SECTION 6

CONTRIBUTIONS AND CAPITAL ACCOUNTS

Section 6.1 – Initial Contributions

Each Member has made, or shall make, the initial Capital Contribution described for that Member on Exhibit A.

Section 6.2 – No Interest on or Demand for Return of Contributions

No Member shall be entitled to receive any interest on his or its Capital Contributions or Capital Account balance, or to have the right to demand the return of his or its contribution to the capital of the Company. No Member shall have the right to demand receipt of Property other than cash in return for such Member's Capital Contribution.

Section 6.3 – Additional Funds and Adjustments

(a) **Call for Funds.** The Members recognize that the Company may require additional funds to pay the costs of conducting its business and operating its properties. If, in the judgment of a Majority in Interest of the Members, additional capital funds are required to pay such costs, the additional funds shall be called for by the Company (the "Call for Funds") and shall be contributed by the Members in proportion to their Percentage Interests.

(b) **Default by Members.** If a Member is unable or unwilling to make any or all of his proportionate contribution upon a Call for Funds (the "Defaulting Member"), upon notice from the Company to such Defaulting Member of such default and the lapse of thirty (30) days from the date of such notice without the Defaulting Member curing the default, then, in addition to such other rights and remedies as may otherwise be available to the Company or the nondefaulting Members, the nondefaulting Members may, at the election of a Majority in Interest of the nondefaulting Members (exclusive of the voting power of the Defaulting Member) (exercisable at any time subsequent to thirty (30) days from the date of the aforescribed notice), do either (or neither) of the following:

(i) The nondefaulting Members may advance to the Company the funds required of the Defaulting Member pursuant to the Call for Funds as a personal loan by the nondefaulting Members to the Defaulting Member. Such loan shall bear interest at a rate equal to the highest lawful rate from time to time. In such event, all distributions or other payments from the Company which would otherwise be distributed to the Defaulting Member shall be distributed first in order to reduce interest and then principal under such loan. If such loan is not repaid, together with all accrued interest thereon, within six (6) months of the date such funds are advanced by the nondefaulting Members for the benefit of the Defaulting Member, then the nondefaulting Members shall have the option to acquire the entire interest of the Defaulting Member in the Company upon giving five (5) days' written notice to that effect to the Defaulting Member. This option shall exist until such time as (A) the Defaulting Member is no longer in default as provided in this Section 6.3(b) and (B) all loans advanced by the nondefaulting Members are paid in full together with all interest accrued thereon. The consideration for such purchase and the payment terms shall be as provided in Section 12 and Exhibit B as to a Breaching Member.

(ii) The nondefaulting Members may make a contribution in excess of their Percentage Interests in Financial Rights, in which event the Percentage Interest in Financial Rights and Percentage Interest in Governance Rights of the Defaulting Member in Company capital, profits, losses and all other attributes shall be reduced to that portion which the Capital Contributions of the Defaulting

Member, including any Call for Funds paid by such Defaulting Member, bears to the aggregate of all Capital Contributions, including Calls for Funds paid by all Members to the Company.

(c) Restricted Authority. During any period in which a Member is a Defaulting Member, such Member shall not have the authority to act on behalf of the Company, all management powers of the Company shall be vested in the nondefaulting Members, and such Member shall be a Breaching Member for all purposes under Sections 12 and 15; provided, however, that a Majority in Interest of the Members (exclusive of the voting power of the Defaulting Member) may authorize any such Defaulting Member to act on behalf of the Company.

SECTION 7 DISTRIBUTIONS

Section 7.1 – Distribution to Pay Taxes

Subject to the existence of sufficient Net Cash Flow, and unless the Members unanimously determine otherwise, the Company shall distribute cash to the Members as provided in this Section 7.1 prior to April 15 following the close of each calendar year. If the federal and state income taxes that will be owed by any Member with respect to such year (computed as if such Member were an individual subject to federal, state, and/or local income tax at the highest marginal rate for ordinary income of individuals and to the maximum rate on capital gains of individuals in the relevant jurisdictions) on any taxable income of the Company allocated to such Member pursuant to this Agreement for the year are greater than the cumulative amount of distributions made to such Member pursuant to this Section 7 (other than this Section 7.1) during such year, then the Company shall distribute additional cash to such Member in an amount equal to such excess. Any distribution made to a Member pursuant to this Section 7.1 shall be treated as an advance of future amounts otherwise distributable to such Member pursuant to this Section 7 (excluding this Section 7.1) and shall be recouped from the first such future distributions.

Section 7.2 – Distribution of Net Cash Flow

Except as specifically provided otherwise in this Agreement, Net Cash Flow shall be distributed to the Members proportionately in accordance with their respective Percentage Interests in Financial Rights at such times as a Majority in Interest of Members may determine from time to time.

Section 7.3 – Distributions Upon Liquidation

Notwithstanding the provisions of this Section 7, distributions made in conjunction with the winding up and liquidation of the Company shall be applied or distributed as provided in Section 17.3 hereof.

Section 7.4 – Reserves and Working Capital

Subject in all events to the Act, a Majority in Interest of the Members may determine that a reserve be set aside for contingencies.

Section 7.5 – Expense Reimbursement

Subject to the approval of a Majority in Interest of Members, each Member shall be reimbursed for all direct expenses reasonably incurred by him or her in regard to the management of the Company.

SECTION 8 ALLOCATIONS

Section 8.1 – Allocation of Net Loss

After giving effect to the special allocations set forth in Section 8.5 and Section 8.6, any Net Loss of the Company, and each item of income, gain, loss, deduction, and credit related thereto, for each year of the Company's operations (except for a Year of Termination) shall be allocated as set forth in Section 8.1(a), subject to the limitation in Section 8.1(b):

(a) Net Loss for any fiscal year shall be allocated to the Members in proportion to their Percentage Interests in Financial Rights.

(b) The Net Losses allocated pursuant to Section 8.1(a) shall not exceed the maximum amount of losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any fiscal year. All losses in excess of the limitations set forth in this Section 8.1(b) shall be allocated as follows:

(i) Among the Members who may receive such an allocation without causing such Members to have an Adjusted Capital Account Deficit at the end of any fiscal year in proportion to their Percentage Interests in Financial Rights; and then

(ii) Among all the Members in proportion to their Percentage Interests in Financial Rights.

Section 8.2 – Allocation of Net Profits

After giving effect to the special allocations set forth in Section 8.5 and Section 8.6, Net Profits of the Company, and each item of income, gain, loss, deduction and credit related thereto, for each year of the Company's operations (except for the Year of Termination) shall be allocated to and among the Members in proportion to their Percentage Interests in Financial Rights.

Section 8.3 – Allocations in Connection with Liquidations

Notwithstanding the allocation provisions set forth in Sections 8.1 and 8.2, but subject to Sections 8.5 and 8.6, all Net Profits or Net Loss realized in connection with the dissolution of the Company (whether or not realized in the Year of Termination) shall be allocated to the Members in a manner so that the distributions to each Member pursuant to Section 7.3 and Section 17.3 hereof shall, to the greatest extent possible, be equal to that amount that each such Member was to receive under Section 7.2 if the amounts to be distributed by the Company in connection with such dissolution were instead distributed under such Section 7.2.

Section 8.4 – Allocation of Profit and Loss on Transfer of Membership Interest

The Net Profits or Net Losses allocable to any Financial Rights in the Company which may have been transferred during any year shall be allocated on the basis of the results of Company operations during the period in which the holder was recognized as the owner thereof as if the Company books had been closed on the date of transfer.

Section 8.5 – Special Allocations

Capitalized terms used in this section not otherwise defined in this Agreement shall have the meaning set forth in the applicable Treasury Regulations.

(a) Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company income (including gross income) and gain shall be specially allocated to the Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Members as quickly as possible, provided that an allocation pursuant to this Section 8.5(a) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 8.5 have been tentatively made as if this Section 8.5(a) were not in the Agreement.

(b) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 8, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in such amounts that comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations.

(c) Member Minimum Gain Chargeback. Notwithstanding any other provision of this Section 8 except Section 8.5(b), if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company Fiscal Year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in such amounts that comply with the partner minimum gain chargeback requirement in Regulations Section 1.704-2(i)(4).

(d) Nonrecourse Deductions. Nonrecourse Deductions and Member Nonrecourse Deduction (each as defined in the Regulations) for any Fiscal Year or other period shall be specially allocated among the Members in proportion to their Percentage Interests in Financial Rights.

Section 8.6 – Curative Allocation

The special allocations set forth in Section 8.1(b) and Section 8.5 hereof (the “Regulatory Allocations”) are intended to comply with certain requirements of the Regulations. Notwithstanding any other provisions of this Section 8 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other profits, losses, and items of income, gain, loss, and deduction among the Members so that, to the extent possible, the net amount of such allocations of other profits, losses, and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

Section 8.7 – Tax Allocations: Code Section 704(c)

In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted tax basis of such property to the Company for federal income tax purposes and its fair market value upon contribution. If the value of any Company asset is adjusted in accordance with the Regulations, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account

of any variation between the adjusted basis of such asset for federal income tax purposes and its fair market value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Tax Matters Member in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this section are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits, Net Losses, other items, or distributions pursuant to any provision of this Agreement.

SECTION 9 MEMBERS

Section 9.1 – Special Meetings

Special Meetings of the Members may be called by, the Secretary, the President or any Member by signing, dating, and delivering to the Secretary or other Members written demand for the meeting describing the purpose or purposes for which it is to be held. Special Meetings must be held in the county where the Company's principal executive office is located.

Section 9.2 – Notice of Meetings

Written notice of the date, time, and place of each meeting and, in the case of a Special Meeting, a statement of the purpose or purposes of the meeting, shall be given to each Member entitled to notice of such meeting not less than ten (10) days nor more than two (2) months before the meeting date. Unless otherwise required under the Act, the Company shall give notice only to Members entitled to vote at the meeting. Notice shall be in writing and shall be communicated by mail, facsimile, electronic mail or overnight carrier. If mailed, written notice by the Company to the Members, if in a comprehensible form, shall be effective when mailed, if mailed by registered or certified mail, postage prepaid and correctly addressed to the Member's address shown in the Company's current record of Members. If not mailed, written notice, if in a comprehensible form, shall be effective when received. If a meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the time of adjournment. However, if a new record date for the adjourned meeting is or must be fixed, notice of the adjourned meeting must be given to persons who are Members as of the new record date.

Section 9.3 – Actions Without a Meeting

(a) Unless the Articles provide otherwise, any action required or permitted to be taken at a meeting of the Members may be taken without a meeting. Any action taken pursuant to subsection (b) hereof shall have the effect of a meeting and vote and may be described as such in any document. Any requirement under the Act or this Agreement for action at a meeting will be satisfied by an action taken in accordance with subsection (b) hereof. If any provision of the Act, the Articles or this Agreement requires that notice of proposed action be given to Members not entitled to vote and the action is to be taken by voting Members pursuant to subsection (b) hereof, then the Company must give its Members not entitled to vote written notice of the proposed action at least ten (10) days before action on written consent is taken. The notice must contain or be accompanied by the same material that would have been required to be sent to Members not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the Members for action.

(b) To take action on written consent, a written consent must be signed by Members who own Membership Interests with voting power equal to the voting power that would be required to take the same action at a meeting of the Members at which all Members are present. The action must be evidenced

by one (1) or more instruments evidencing the consent, which shall be included in the records of the Company. All such instruments may be signed in counterparts. If not otherwise determined under Section 9.5 of this Agreement or the Act, the record date for determining Members entitled to take action without a meeting is the date the first Member signs the consent.

Section 9.4 – Waiver of Notice

A Member may waive any notice required by the Articles, this Agreement or the Act. A waiver of notice by a Member entitled thereto is effective, whether given before or after the meeting or other balloting, if the waiver is in writing. If a written waiver is given, such written waiver shall be included in the records of the Company. A Member's attendance at a meeting is a waiver of notice of that meeting, unless the Member objects at the beginning of the meeting (or promptly upon his arrival) to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting. The Secretary shall note the objection in the minutes of the meeting.

Section 9.5 – Fixing of Record Date

A Majority in Interest of the Members may fix the record date for one (1) or more voting groups in order to determine the Members entitled to notice of a Members' meeting, to demand a special meeting, to vote, or to take any other action. (As used in this Agreement, "voting group" shall mean all Membership Interests of one (1) or more classes or series that under the Articles, this Agreement or the provisions of the Act are entitled to vote and be counted together collectively on a matter at a meeting of Members.) However, a record date shall not be more than seventy (70) days before the meeting or action requiring a determination of Members. If not otherwise fixed hereunder, the record date for determining Members entitled to notice of and to vote at a special Members' meeting shall be the close of business on the business day before the first notice is delivered to Members, and the record date for determining Members entitled to demand a special meeting shall be the date the first Member signs the demand. A determination of Members entitled to notice of or vote at a Members' meeting shall be effective for any adjournment of the meeting unless a Majority in Interest of the Members fixes a new record date, which they must do if the meeting is adjourned to a date more than four (4) months after the date fixed for the original meeting.

Section 9.6 – Quorum

Except as otherwise provided in the Act or in the LLC Documents, Members holding a majority of the voting power of Membership Interests entitled to vote at a meeting are a quorum for the transaction of business. Once a Membership Interest is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

Section 9.7 – Proxies

Subject to the provisions of the Act, a Member may vote in person or by proxy. A Member may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. An appointment of proxy shall be effective when received by the Secretary or other officer or any agent authorized to tabulate votes. An appointment shall be valid for eleven (11) months unless another period is expressly provided in the appointment form. An appointment of a proxy shall be revocable by the Member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest.

Section 9.8 – Voting Entitlement to Membership Interests

Unless the Articles or Act provide otherwise, and except as expressly provided otherwise in this Agreement, each outstanding Membership Interest, regardless of class, shall be entitled to exercise a percentage voting power equal to that Member's Percentage Interest in Governance Rights on each matter voted on at a Members' meeting. Only Membership Interests shall be entitled to vote. Redeemable Membership Interests shall not be entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the Membership Interests has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the Membership Interests, and no such Membership Interests shall be counted in determining the total number of outstanding Membership Interests of the Company at any given time. Membership Interests standing in the name of another corporation, partnership or limited liability company, domestic or foreign, may be voted by such officer, partner, agent, manager or proxy as the By-Laws, partnership agreement or operating agreement of such corporation, partnership, or limited liability company may prescribe or, in the absence of a By-Law, operating or partnership agreement provision, as the Board of Directors, partners or Governors (or, in the case of a member-managed limited liability company, the members) of such corporation or limited liability company may determine, as applicable. The Company may rely on the representation of such officer, partner, agent, manager or proxy as to the authority unless such authority is questioned. Except where the Act or the LLC Documents require a larger proportion, the Members shall take action by the affirmative vote of the Members holding a majority of the voting power present and entitled to vote on that item of business in a meeting in which a quorum is present.

Section 9.9 - Deadlock

In the event of a deadlock between the Members which cannot be resolved through direct discussions, the following procedures shall be undertaken to resolve such deadlock:

(1) The Members shall first endeavor to settle their dispute by mediation. Each Member shall submit the names of three (3) prospective mediators in Knox County, and a single mediator shall be mutually agreed upon, with each party agreeing not to unreasonably refrain from selecting a mediator and each party agreeing to use good faith, best efforts to conduct the mediation as quickly as possible after a unresolvable deadlock has occurred. Each Member shall each bear his own costs and expenses, and an equal share of the costs of mediation.

(2) If such deadlock is not resolved promptly by mediation, Browning shall offer to buy the Membership Interest held by Lowrance at a purchase price and on purchase terms determined by Browning. In such event, Browning's offer to buy Lowrance's Membership Interest shall also be construed as an offer by Browning to sell Browning's Membership Interest to Lowrance at the same per share price and on the same terms and conditions (the "Offer Terms"). Browning shall initiate any such offer by written notice to Lowrance outlining all relevant Offer Terms. Within a period of thirty (30) days after receipt of such notice, Lowrance shall respond in writing to Browning, stating whether he desires to sell his Membership Interest to Browning or purchase Browning's Membership Interest. Failure to respond timely shall be deemed to constitute acceptance of the Offer Terms, obligating Browning to purchase and Lowrance to sell his Membership Interest. If Lowrance responds with an election to sell his Membership Interest to Browning, or Lowrance responds with an election to purchase Browning's Membership Interest, such sale or purchase, as the case may be, shall be closed in accordance with the Offer Terms, with Browning and Lowrance each paying his own expenses in connection with such sale. The transferring shareholder shall also execute and deliver such assignments and other documents as shall be necessary to convey such shareholder's Membership Interest to the purchasing shareholder.

Section 9.10 – Discharge of Duties; Noncompetition

A Member shall discharge his duties as a Member in accordance with the provisions of the Act, except that each Member may engage in whatever activities such Member may choose, subject to the noncompetition provision below, without having or incurring any obligation to offer any interest in such activities to the Company or any party hereto, and each Member hereby waives, relinquishes, and renounces any such right or claim of participation. It is the intention of the Members to hereby waive any obligation to refrain from competing with the Company imposed by T.C.A. § 48-249-403(b)(3), except as follows:

(a) While a Member of Company, no Member shall, directly or indirectly, on such Member's behalf or on behalf of any other person or entity, other than at the direction of Company and on behalf of Company: (i) organize, own any interest in or operate an ambulatory surgery center in Loudon County, Tennessee; (ii) perform any professional services at an ambulatory surgery center in Loudon County, Tennessee; or (iii) assist any person or entity (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to organize, own or operate an ambulatory surgery center in Loudon County, Tennessee; and

(b) For a period of one (1) year after any termination of such Member's Membership Interest, no Member shall, directly or indirectly, on such Member's behalf or on behalf of any other person or entity: (i) organize, own any interest in or operate an ambulatory surgery center in Loudon County, Tennessee; or (ii) assist any person or entity (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to organize, own or operate an ambulatory surgery center in Loudon County, Tennessee.

Section 9.11 – Member Guarantees

Each Member agrees to personally guarantee the Company's debt and other obligations in the manner and amount required by any vendor, lender or financial institution.

SECTION 10 OFFICERS

Section 10.1 – Powers

The day to day management and control of the Company, and its business and affairs, shall be conducted or exercised by, or under the direction and authority of, the officers. The officers shall have the rights, powers and duties which may be possessed by officers under the Act, and such other rights, powers, and duties specified in this Agreement or designated by the Members, or which are necessary, advisable or convenient to the discharge of their duties under this Agreement.

Section 10.2 – Election and Term

At any special meeting of the Members called for that purpose, a Majority in Interest of the Members shall elect a President and a Secretary and such other officers as the Members may determine, who may include one or more vice presidents, a treasurer, a controller and one or more assistant treasurers, and assistant secretaries. Each officer shall serve until his successor is elected and qualified or until his earlier resignation or removal as set forth in Section 10.5. Any number of offices may be held by the same person.

Section 10.3 – Duties

The duties and powers of the officers shall be as follows:

(a) **President.** The President shall be the chief executive officer of the Company, and, as such, shall be primarily responsible for the general management of the business of the Company and for implementing the policies and directives of the Members. The President shall have authority to make contracts on behalf of the Company in the ordinary course of the Company's business, shall preside at all meetings of the Members and shall perform such other duties as from time to time may be assigned by the Members.

(b) **Secretary-Treasurer.** The Secretary-Treasurer shall attend all meetings of the Members and shall prepare minutes or records of proceeding of all such meetings in a book to be kept for that purpose. The Secretary shall give, or cause to be given, such notices as may be required of all meetings of the Members, shall authenticate and certify records and proceedings of the Company, shall keep accurate membership records for the Company, shall supervise the financial operations of the Company, and shall perform such other duties as may be assigned by the President or the Members, if any.

(c) **Discharge of Duties.** An officer shall discharge the duties of an office in accordance with the provisions of the Act.

Section 10.4 – Compensation

The salaries and other compensation of the officers shall be as determined by a Majority in Interest of the Members from time to time.

Section 10.5 – Removal

A Majority in Interest of the Members may remove any officer at any time, with or without cause, but no such removal shall affect the contract rights, if any, of the person so removed.

Section 10.6 – Resignation

An officer may resign at any time by delivering written notice to the Company. A resignation is effective without acceptance when the notice is delivered to the Company, unless the notice specifies a later effective date. If a resignation is made effective at a later date and the Company accepts the future effective date, the Members may fill the pending vacancy before the effective date if it provides that the successor does not take office until the effective date. An officer's resignation does not affect the Company's contract rights, if any, with the officer.

SECTION 11 INDEMNIFICATION

Subject to any limitations set forth in the LLC Documents, the Company shall indemnify and advance expenses to each present and future Member or Officer of the Company acting within the scope of their authority as a Member or Officer (and, in either case, his heirs, estate, personal representatives or administrators) to the full extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted. The Company may indemnify and advance expenses to any employee or agent of the Company who is not a Member or Officer (and his heirs, estate, personal representatives or administrators) to the same extent as to a Member or Officer, if a Majority in Interest of the disinterested Members determine that it is in the best interests of the Company to do so. Subject to the restrictions set

forth in T.C.A. §§ 48-249-115(i)(1)(A), (B) or (C), the Company shall also have the power to contract with any individual Member, Officer, employee, or agent for whatever additional indemnification a Majority in Interest of the Members shall deem appropriate.

SECTION 12

DISPOSITION OF MEMBERSHIP INTERESTS

Section 12.1 – Restrictions on Transfer

(a) **General Restriction on Transfer.** Except as otherwise permitted by this Agreement, no Member and no person who acquires an interest in or legal or beneficial title to all or any part of a Membership Interest in the Company (a “Transferee”) (i) by a voluntary transfer of such Membership Interest from a Member (such transfer being referred to herein as a “Voluntary Transfer” and such transferee as a “Voluntary Transferee”) or (ii) by virtue of any transfer or disposition thereof under judicial order, legal process, execution, attachment, or enforcement of a pledge, trust or other security interest or by operation of law (such transfer being referred to herein as an “Involuntary Transfer” and such transferee as an “Involuntary Transferee”), may sell, assign, pledge, hypothecate, give, bequeath or otherwise transfer or dispose of (the foregoing hereinafter collectively referred to as a “Transfer”) all, or any portion, of an interest presently held, or hereafter acquired, by such Member or Transferee unless such Transfer is effected as provided herein and in the other provisions of this Section 12. If any Transfer of an interest in the Company is made to an incompetent, including but not limited to a minor, the personal representative of such incompetent shall be entitled to, and shall, act on behalf of such incompetent in complying with the provisions of this Agreement.

(b) **Absolute Restriction on Transfer.** Notwithstanding anything herein to the contrary, no Member or Assignee (including without limitation a Transferee) may Transfer all or a portion of the Member’s or Assignee’s Membership Interest unless such Transfer complies with the provisions of this Agreement and the Act, including without limitation the provisions of this Section 12. No Transfer of a Membership Interest may be made: (i) without an opinion of counsel satisfactory to the Members that such Transfer is subject to an effective registration under, or exempt from the registration requirements of, the applicable state and federal securities laws; (ii) unless and until the Company receives a legal opinion from healthcare regulatory counsel that the Transfer to the proposed Transferee or Assignee does not adversely affect Company’s qualification for safe harbor protection for single specialty ambulatory surgery centers under the federal Anti-Kickback Statute; (iii) unless and until the Company receives from the Assignee the information and agreements that the Members may reasonably require, including but not limited to any taxpayer identification number and any agreement that may be required by any taxing jurisdiction; (iv) unless and until the Transfer is approved by a Majority in Interest of the other Members, exclusive of the voting power held by the Member seeking to make the Transfer (in the event of a Transfer of Governance Rights to a person or entity not already a Member of the Company); and (v) unless and until the Member or Assignee seeking to make the disposition has complied with the buy-sell provisions set forth in this Section 12.

Section 12.2 – Agreement of Transferees; Status of Transferee

Notwithstanding the provisions of Sections 12.1(a) and 12.1(b), legal or beneficial title to any interest in the Company may not be Transferred to, or acquired by, any Transferee unless and until such Transferee has executed and delivered to the Company a counterpart to this Agreement evidencing such Transferee’s consent to be bound by all of the terms of this Agreement. Any person whose admission to the Company shall have been approved shall become a substitute or additional Member only after (i) the above conditions with respect to execution of required instruments shall have been satisfied; and (ii) such person shall have paid all reasonable legal fees and filing costs in connection with his substitution as a

substituted or additional Member; provided, however, that for purposes of allocating profits and losses and distributing cash and making additional capital contributions required hereunder, a person shall be treated as having become a Member on the date of the instruments of Transfer.

Section 12.3 – Effect of Purported Transfer

Any purported Transfer of a Membership Interest in violation of this Agreement shall be of no force or effect, and no such Transfer shall be made or recorded on the books of the Membership. Each Member agrees that monetary damages for violation of this Agreement is not an adequate remedy and, therefore, any Transfer or threatened Transfer in violation of this Agreement may and should be enjoined. Any purported Transfer in violation of this Agreement will not affect the beneficial ownership of a Membership Interest and the Member making the purported Transfer shall retain the right to share in, and shall be allocated, the profit, loss, Net Cash Flow of the Company as otherwise provided herein, and the Company shall continue as a limited liability company. Additionally, the Member making the purported Transfer shall continue to report his share of profit, gain or loss of the Membership in accordance with the applicable provisions of the Code.

Section 12.4 – Sale on Triggering Event

(a) **Triggering Event.** In the event of the occurrence of any Triggering Event as to a Member (the “Affected Member”), unless the Company is dissolved, the Company shall purchase all of the Membership Interest owned by the Affected Member, and the Affected Member shall sell such Membership Interest to the Company as provided herein. The purchase price for the Membership Interest to be sold hereunder shall be an amount equal to the Agreed Value of such Membership Interest (as defined in Section 12.4(b)). The Agreed Value shall be determined pursuant to the method described in this Agreement and shall be final and binding on the Members and the Company. At the closing, the Agreed Value shall be paid in the manner described in Section 12.4(c) against delivery of duly executed documents of sale, transfer, and assignment as may be reasonably necessary or appropriate to evidence the Transfer of such Membership Interest free and clear of any encumbrances, liens or restrictions of any nature (other than the restrictions created by the LLC Documents or the Act), and, upon such closing, the Company and all of the Members, including the Affected Member, or his personal representative, shall execute, acknowledge, deliver, file, and record in all appropriate public offices such written instrument or instruments as may be required by applicable law to evidence the withdrawal of the Affected Member and the purchase of his Membership Interest by the Company.

(b) **Agreed Value.** The Agreed Value (the “Agreed Value”) of any Membership Interest to be Transferred pursuant to Section 12.4(a) above shall be determined as set forth on Exhibit B attached hereto and incorporated by reference herein. The Agreed Value shall be calculated as of the end of the calendar month immediately preceding the date of the Triggering Event or Breach, as applicable. (For example, if a Triggering Event occurred on November 12, the Agreed Value would be determined as of the immediately preceding October 31.) The selling Member shall be informed of such Agreed Value not later than the thirtieth (30th) day following the occurrence of a Triggering Event, with respect to a Transfer under Section 12.4(a).

THE COMPANY AND THE MEMBERS HEREBY WAIVE THE PROVISIONS OF T.C.A. § 48-249-506 AS TO THE DETERMINATION AND PAYMENT OF “FAIR VALUE” FOR ANY MEMBERSHIP INTEREST TO BE TRANSFERRED PURSUANT TO SECTION 12.4(a) AND AGREE THAT THE FAIR VALUE OF ANY SUCH MEMBERSHIP INTEREST SHALL BE ITS “AGREED VALUE” TO BE DETERMINED AND PAID AS SET FORTH IN THIS AGREEMENT.

(c) Payment of Purchase Price. The Purchase Price of any Membership Interest sold under Section 12.4(a) shall, except as otherwise agreed, be payable by execution and delivery of a Promissory Note ("Note") bearing interest at an annual rate equal to the Prime Rate plus 1%. Such Note shall be amortized over sixty (60) equal monthly payments of principal and interest at the aforesaid rate. Such Promissory Note shall be secured by a collateral assignment of the Membership Interests being purchased (unless the sale follows a Member's Adverse Termination or Breach, in which event no security shall be required for such Note). Such Promissory Note and collateral assignment shall be in form and substance reasonably satisfactory to the parties. In addition, the purchaser(s) of any Membership Interest under Section 12.4(a) shall use good faith efforts to have the selling Member released from (and shall indemnify and hold harmless the selling Member from and against any liability under) any guaranty by the selling Member of any Company debts and obligations (unless the sale follows a Member's Adverse Termination or Breach in which event the purchaser(s) have no such obligation to attempt to obtain the selling Member's release from any such guaranty). Such closing shall occur on or before the ninetieth (90th) day following occurrence of a Triggering Event, with respect to a Transfer under Section 12.4(a).

(d) Dissolution and Liquidation. Notwithstanding anything herein to the contrary, in lieu of the Company purchasing the Membership Interest of a Member as a result of a Triggering Event or a Breach, the Company may be dissolved and liquidated upon the approval of a Majority in Interest of the Company's remaining Members, exclusive of the voting power held by the Affected Member.

Section 12.5 – Restrictions Applicable to Holders

Any and all restrictions on Transfer (including without limitation Voluntary Transfer and/or Involuntary Transfer) and buy-sell rights and obligations imposed by or provided for in this Section 12 shall apply with equal force and effect to any Financial Rights owned by a holder.

SECTION 13 BINDING ON SUBSEQUENT MEMBERS

The provisions of this Agreement shall be binding upon a person who hereafter becomes a Member without executing this Agreement if the new Member otherwise complies with the conditions for becoming a Member set forth in the LLC Documents.

SECTION 14 TERMINATION OF A MEMBER'S MEMBERSHIP INTEREST

Section 14.1 – No Right to Withdraw

A Member shall have neither the power nor the right to withdraw from the Company by express will or otherwise terminate the Member's Membership Interest in the Company. Each Member hereby agrees that the Members have entered into this Agreement based on their mutual expectation that all Members will continue as Members and carry out the duties and obligations undertaken by them under the LLC Documents. Each Member covenants and agrees that, without the consent of Majority in Interest of the other Members, such Member cannot withdraw from the Company by express will or otherwise permit an Adverse Termination to occur as to such Member and any attempted withdrawal by such Member shall be null and void.

Section 14.2 – Expulsion

The Membership shall have the power and authority to expel any Member for any reason, with or without cause, upon a unanimous vote of at least seventy-five percent (75%) of the Percentage Interests held by the other Members (regardless of quorum and number present at any meeting called for such purpose).

SECTION 15 CONSEQUENCES OF BREACH

Notwithstanding anything to the contrary in the Act, and in addition to any other rights or remedies available under this Agreement or otherwise available at law or in equity for any Breach, any Breaching Member shall be subject to this Section 15. In such event, at the election and sole discretion of a Majority in Interest of the other Members, one or more of the following shall occur:

- (a) The Breaching Member shall immediately cease to be a Member and shall have no further power to vote, act for or bind the Company;
- (b) The Breaching Member shall be liable in damages, without the requirement of a prior accounting, to the Company or any other Member for all costs and liabilities that the Company or such other Member may incur as a result of such Breach and the Company or such other Member may offset the amount of its damages against any sums whatsoever due from the Company or such other Member to the Breaching Member (including without limitation any against sums due as Compensation, distributions or purchase price for the Breaching Member's Membership Interests);
- (c) The Company shall have no obligation to pay to the Breaching Member his contributions, capital or profits, but may, by notice to the Breaching Member, elect to purchase the Membership Interest of the Breaching Member pursuant to the procedure set forth in Section 12.4(a) hereof;
- (d) If the Company does not elect to purchase the interest of the Breaching Member pursuant to subsection 15(c) or Section 12.4(a) hereof, the Company shall treat the Breaching Member as if he were an unadmitted assignee of the Membership Interest of the Breaching Member and shall make distributions to the Breaching Member of those amounts otherwise payable with respect to such Membership Interest pursuant to this Agreement;
- (e) The Company may apply any distributions otherwise payable with respect to such Membership Interest (including any payments of the purchase price pursuant to Section 12.4(c) hereof) to satisfy any claim it may have against the Breaching Member;
- (f) The Breaching Member shall have no right to inspect the Company's books or records or obtain other information concerning the Company's operations, except that the Breaching Member shall be provided tax information to the extent expressly required by Section 4.2; and
- (g) The Breaching Member shall continue to be liable to the Company for any unpaid capital contributions required by this Agreement.

SECTION 16
ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS

Section 16.1 – Rights of Assignees

The Assignee of all or any portion of a Membership Interest has no right to participate in the management of the business and affairs of the Company or to become a Member. The Assignee is only entitled to receive the distributions and return of capital, and to be allocated the Net Profits and Net Losses attributable to the Membership Interest, to the extent assigned.

Section 16.2 – Admission of Assignees

An Assignee of a Membership Interest shall be admitted as a new Member and admitted to all the rights of the Member who initially assigned the Membership Interest only with the approval of a Majority Interest of the Members. The Members may grant or withhold the approval of such admission for any in their sole and absolute discretion. If so admitted, the substituted Member has all the rights and powers and is subject to all the restrictions and liabilities of the Member originally assigning the Membership Interest. The admission of a substituted Member, without more, shall not release the Member originally assigning the Membership Interest from any liability to the Company that may have existed prior to the approval.

Section 16.3 – Admission of Additional Members

A Majority in Interest of Members must approve the admission of additional Members and determine the Membership Interests and Capital Contributions of such Members.

SECTION 17
DISSOLUTION AND WINDING UP

Section 17.1 – Dissolution

The Company shall be dissolved and its affairs wound up, upon the first to occur of the following events (which, unless the Members agree to continue the business, shall constitute Dissolution Events):

- (a) by affirmative vote of a Majority in Interest of the Members entitled to vote; or
- (b) as otherwise may be required by law.

Section 17.2 – Effect and Notice of Dissolution

If dissolution occurs pursuant to Section 17.1(a), or (b), the Company shall deliver a notice of dissolution to the Secretary of State for filing, in accordance with the Act. Upon dissolution, the Company shall cease carrying on the Company business, except insofar as may be necessary for the winding up of its business, but the Company is not terminated, and continues until the winding up of the affairs of the Company is completed and articles of termination have been accepted by the Secretary of State for filing.

Section 17.3 – Distribution of Assets on Dissolution

Upon the winding up of the Company, the Company's property shall be distributed:

(a) to creditors, including Members who are creditors, to the extent and in the order permitted by law, in satisfaction of the Company's liabilities; and

(b) to Members in accordance with positive Capital Account balances taking into account all Capital Account adjustments for the Company's taxable year in which the liquidation occurs. Liquidation proceeds shall be paid within 60 days of the end of the Company's taxable year or, if later, within 90 days after the date of liquidation. Such distributions shall be in cash or Property (which need not be distributed proportionately) or partly in both, as determined by the Members.

Section 17.4 – Winding Up and Articles of Termination

The winding up of the Company shall be completed when all debts, liabilities, and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the Company have been distributed to the Members. Upon the completion of winding up of the Company, articles of termination shall be delivered to the Secretary of State for filing to the extent required by the Act. The articles of termination shall set forth the information required by the Act.

SECTION 18 MISCELLANEOUS PROVISIONS

Section 18.1 – Entire Agreement

This Agreement represents the entire agreement among all the Members and between the Members and the Company. This Agreement may only be amended by a written amendment executed by all of the Members. The Operating Agreement of the Company must be in writing.

Section 18.2 – No Partnership Intended for Nontax Purposes

The Members have formed the Company under the Act, to be treated as a partnership for tax purposes only under the Code, and expressly do not intend hereby to form a partnership under either the Tennessee Revised Uniform Partnership Act or the Tennessee Revised Uniform Limited Partnership Act. The Members do not intend to be partners one to another, or partners as to any third party. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

Section 18.3 – Rights of Creditors and Third Parties

The Agreement is entered into among the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

Section 18.4 – Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original.

Section 18.5 – Notices

Any notice to be given hereunder shall be deemed to have been properly given if in writing and if delivered personally, or sent by registered or certified mail, postage prepaid and correctly addressed, or sent by overnight express delivery by a nationally recognized carrier, or sent by facsimile, to the Company at its office address and to the Members at their addresses set forth on Exhibit A and shall be effective upon delivery, if personally delivered, or when deposited in the mail or with the overnight delivery service or faxed, if mailed, delivered or faxed in accordance herewith. Any party may change its address for notices by delivering written notice of its new address to the Company and other Members in accordance with this Agreement.

Section 18.6 – Arbitration

Any controversies, disputes, or claims arising out of or relating to this Agreement shall be submitted to binding arbitration in Knoxville, Tennessee. If the parties cannot mutually agree upon an arbitrator, each party shall designate an arbitrator and the designated arbitrators shall select the arbitrator. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, or such rules as the parties may agree upon. The arbitrator shall have the authority to award relief under legal or equitable principles, including interim or preliminary relief, and to allocate responsibility for the costs of arbitration and to award recovery of attorneys' fees and expenses in such a manner as is determined to be appropriate by the arbitrator. The arbitration award shall be enforceable in any court having jurisdiction. This Section 18.6 shall not apply to any claim brought in a court of competent jurisdiction to enforce an arbitration award or to obtain equitable relief.

Section 18.7 – Enforcement Costs

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, or default, in connection with this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party the costs and expenses it incurred in such action, including but not limited to, reasonable attorney's fees and costs and other expenses incurred at trial and in appellate proceedings, in addition to any other relief to which such party may be entitled. The extent to which a party is determined to be a "prevailing party" and the appropriate allocation of attorneys' fees and costs and other expenses shall be decided by (i) the arbitrator under Section 18.6 or (ii) the court, as the case may be.

Section 18.8 – Governing Law

This Agreement and the rights of the parties under this Agreement will be governed by, interpreted, and enforced in accordance with the laws of the State of Tennessee, without regard to the conflicts of law principles of any jurisdiction.

Section 18.9 – Binding Effect; Conflicts

Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective distributees, successors, and assigns. This Agreement is subject to, and governed by, the Act and the Articles. In the event of a direct conflict between the provisions of this Agreement and the nonwaivable provisions of the Act set forth in T.C.A. § 48-249-205(b) or the provisions of the Articles, the nonwaivable provisions of the Act or the Articles, as the case may be, will be controlling. Conversely, in the event of a direct conflict between the provisions of this Agreement and the waivable provisions of the Act, the provisions of this Agreement will be controlling.

Section 18.10 – Headings; Interpretation

All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and vice versa, as the context requires.

Section 18.11 – Severability

If any provision of this Agreement is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, unreasonable, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, unreasonable, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, unreasonable, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, unreasonable, or unenforceable provision as may be possible and be legal, valid, reasonable, and enforceable.

Section 18.12 – Additional Documents and Acts

Each Member agrees to promptly execute and deliver to the Company such additional documents, statements of interest and holdings, designations, powers of attorney, and other instruments, and to perform such additional acts, as the Company may determine to be necessary, useful or appropriate to complete the organization of the Company, effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated by this Agreement, and to comply with all applicable laws, rules, and regulations.

SECTION 19 ADVICE OF COUNSEL

Each person signing this Agreement:

- (a) understands that this Agreement contains legally binding provisions;
- (b) is advised, and has had the opportunity, to consult with that person's own attorney;
- (c) has either consulted with the person's own attorney or consciously decided not to consult with the person's own attorney; and
- (d) acknowledges that London & Amburn, P.C. has acted as counsel to the Company in this matter and has not advised any other party in this matter. Each other party has consulted with its own separate legal counsel in connection herewith.

SECTION 20 INVESTMENT REPRESENTATIONS

Each of the Members represents that he is acquiring his interest in the Company for his own account for investment and not with a view to the distribution or resale thereof, in whole or in part, and represents that he and his representative, if any, have had a full opportunity to ask questions of and

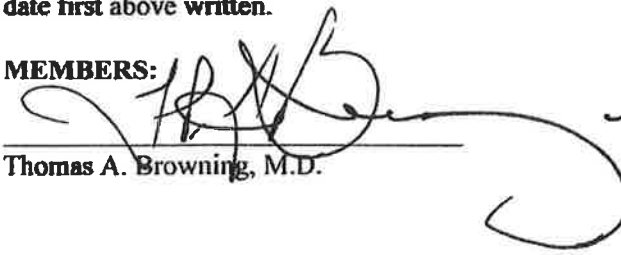
receive answers from the Company, concerning the terms and conditions of such investment and that all questions have been answered to his full satisfaction.

SECTION 21 CONFIDENTIALITY

Each Member agrees that it will keep confidential and will not disclose, divulge or use in any manner (other than for Company purposes) any confidential, proprietary or secret information which such Member may obtain from the Company, including without limitation any such information obtained from financial statements, reports, and other materials submitted by the Company to such Member pursuant to this Agreement, or pursuant to visitation or inspection rights granted hereunder, unless such information (a) was in such Member's possession prior to disclosure of such information to such Member by the Company hereunder, (b) was generally known to the public at the time of disclosure of such information to such Member by the Company hereunder, or becomes generally known to the public after such disclosure through no act of such Member, (c) has come into the possession of such Member from a third party who to such Member's knowledge is under no obligation to the Company to maintain the confidentiality of such information or (d) is required to be disclosed or used by such Member by law; provided that if such Member is ordered to disclose or use such information pursuant to a judicial or governmental request, requirement or order, such Member shall promptly, and in any event prior to complying therewith, notify the Company and take commercially reasonable steps to assist the Company in contesting such request, requirement or order or otherwise protecting the Company's rights.

IN WITNESS WHEREOF, the undersigned have executed this Operating Agreement as of the date first above written.

MEMBERS:


Thomas A. Browning, M.D.


Matthew D. Lowrance, D.O.

EXHIBIT A

MEMBERS AND ADDRESSES FOR NOTICES	INITIAL CAPITAL CONTRIBUTION	PERCENTAGE INTEREST IN GOVERNANCE AND FINANCIAL RIGHTS OF MEMBER
Thomas A. Browning, M.D. 149 Kelsey Lane, Suite 104, Lenoir City, Tennessee 37772	\$1,000.00	50%
Matthew D. Lowrance, D.O.* 149 Kelsey Lane, Suite 104, Lenoir City, Tennessee 377729	\$1,000.00	50%

*** Tax Matters Member**

EXHIBIT B

(a) Subject to the provisions of paragraph (c) below, the Agreed Value of a Membership Interest ("Agreed Value") shall be (i) the Total Value of the Company (defined below) multiplied by (ii) the Percentage Interest in Financial Rights of the Membership Interest being sold, with the product of (i) and (ii) being further reduced by 25% so long as the Agreed Value is a positive amount and if such Membership Interest is being acquired from a Breaching Member. If the calculation of the Agreed Value results in a negative amount, then the selling Member or the selling Member's estate, as the case may be, shall pay such amount to the Company at the closing. The selling Member acknowledges and agrees that the Company shall be entitled to offset such negative amount against any amounts the Company may owe to such selling Member.

For example, if the Total Value of the Company is \$10,000 and the Percentage Interest in Financial Rights of the Membership Interest being sold is 50%, then the Agreed Value of such Membership Interest is \$10,000 multiplied by 50%, or \$5,000, with that product being further reduced by 25%, or \$1,250 if such Membership Interest is being acquired from a Breaching Member.

(b) For purposes of paragraph (a) above, the Total Value of the Company ("Total Value") means, unless the Company and the selling Member (or such Member's estate, personal or legal representative and/or heir, as the case may be) otherwise mutually agree in writing, an amount equal to (i) the fair market value of the Company's assets (as determined by a qualified, independent appraiser, with the cost of such appraisal being shared equally between the purchaser and the seller) less (ii) all of the Company's debts and liabilities, as of the applicable date of determination pursuant to Section 12.4. The determination of Total Value by the CPA firm then servicing the Company's account shall be final and binding on each of the Members and the Company. If, for any reason, the selling Member and the purchaser cannot agree upon an appraiser to conduct the appraisal, then the selling Member and the purchaser shall each select an appraiser and the two appraisers so chosen shall select a third appraiser who shall conduct the appraisal.

Attachment Section A-6A

**Site Control-Deed of Trust &
Option to Lease**

**PARTICIPATING Real Estate/Bldg
Owners & Landlord**

OWNERSHIP %

Provider Owners:

David N. Montgomery, OD-Chief Mgr	33.34%
Thomas A. Browning, MD-Member	33.33%
Matthew D. Lowrance, DO-Member	33.33%
	<hr/>
	100.00%

DMT Properties, LLC

149 Kelsey Ln

Ste #104

Lenoir City, TN 37772 (Loudon Cty)

Project Site Location:

5491 Creekwood Park Blvd

Lenoir City, TN 37772 (Loudon Cty)

First-Citizens Bank & Trust Company
DAC 20
PO Box 28592
Raleigh, NC 27611-8592

First Citizens Bank
Loan Servicing Department-DAC20
PO Box 26592
Raleigh, NC 27611-6592

DMT PROPERTIES LLC
149 KELBEY LANE STE 104
LENOIR CITY, TN 37772

DMT PROPERTIES LLC
149 KELSEY LANE STE 104
LENOIR CITY, TN 37772

This Deed of Trust prepared by:

[illegible]

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's

**DEED OF TRUST
(Continued)**

Page 2

ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Tennessee law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due, except for the Existing indebtedness referred to below, and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor

**DEED OF TRUST
(Continued)**

Page 3

shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Grantor holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Compliance with Existing Indebtedness. During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Deed of Trust, to the extent compliance with the terms of this Deed of Trust would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Deed of Trust for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing Indebtedness.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to comply with any obligation to maintain Existing Indebtedness in good standing as required below, or to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

EXISTING INDEBTEDNESS. The following provisions concerning Existing Indebtedness are a part of this Deed of Trust:

Existing Lien. The lien of this Deed of Trust securing the Indebtedness may be secondary and inferior to an existing lien. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

No Modification. Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Deed of Trust by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding

**DEED OF TRUST
(Continued)**

Page 4

by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor shall well and truly pay and perform the obligations at the time and times, and in the manner mentioned in this Deed of Trust, and shall well and truly abide by and comply with each and every term, covenant and condition set forth in this Deed of Trust, then this conveyance shall be and become null and void and the Trustee shall convey the Property to the Grantor by release deed at Grantor's expense.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the indebtedness or Grantor's ability to perform Grantor's obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**DEED OF TRUST
(Continued)**

Page 5

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Grantor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Existing Indebtedness. The payment of any installment of principal or any interest on the Existing Indebtedness is not made within the time required by the promissory note evidencing such indebtedness, or a default occurs under the instrument securing such indebtedness and is not cured during any applicable grace period in such instrument, or any suit or other action is commenced to foreclose any existing lien on the Property.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor, the same being expressly waived, to declare the entire Indebtedness immediately due and payable, including (if permitted by applicable law) any prepayment penalty for which Grantor may be obligated.

Foreclosure. With respect to all or any part of the Real Property, (a) the Trustee, at the Lender's request, shall have the right to enter and take possession of the Real Property and to sell all or part of the Real Property, at public auction, to the highest bidder for cash, free from equity of redemption, and any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, after giving notice of the time, place and terms of such sale and of the Real Property to be sold as required by law, or (b) the Trustee or the Lender shall have the right to foreclose by judicial proceeding, in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to make application to a court of competent jurisdiction to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property prior to foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled, the equity of redemption, any statutory or common law right of redemption, homestead, dower, marital share and all other exemptions and other rights which might defeat, reduce or affect the right of the Lender to sell the Real Property or the Personal Property for the collection of the Indebtedness. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Trustee shall give notice of sale by public advertisement in the county in which the Property is located for the time and in the manner provided by applicable law, and Lender or Trustee shall mail a copy of the

**DEED OF TRUST
(Continued)**

Page 6

notice of sale to Grantor. Trustee, without demand on Grantor, shall sell the Property at public auction to the highest bidder at the time and under the terms designated in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying that Real Property without any covenant or warranty, express or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. If the Property is sold pursuant to this paragraph, Grantor, or any person holding possession of the Real Property through Grantor, shall immediately surrender possession of the Real Property to the purchaser at the sale. If possession is not surrendered, Grantor or such person shall be a tenant at will of the purchaser and hereby agrees to pay the purchaser the reasonable rental value of the Real Property after sale.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Indemnification of Trustee. Grantor agrees to indemnify Trustee for all reasonable costs, charges, and attorneys' fees incurred by Trustee if Trustee is made a party to or intervenes in any action or proceeding affecting the Property, the title to the Property, or the interest of the Trustee or the Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. Trustee shall have the authority, in Trustee's discretion, to employ all proper agents and attorneys in the execution of Trustee's duties under this Deed of Trust and in conducting any sale made pursuant to the terms of this Deed of Trust and to pay for the services rendered by such agents and attorneys out of the proceeds of the sale of the Property. If no sale is made, or if the proceeds of the sale are insufficient to pay such agents and attorneys, then Grantor agrees to pay the cost of such services. The parties in interest hereby waive the necessity of Trustee making oath, filing inventory, or giving bond as security for the execution of this trust, as may be required by the laws of Tennessee.

Successors and Assigns. In the event of the death, refusal, or of inability for any cause, on the part of Trustee named in this Deed of Trust, or of any successor trustee, to act at any time when action under the foregoing powers and trust may be required, or for any other reason satisfactory to Lender, Lender is authorized, either in Lender's own name or through an attorney or attorneys in fact appointed for that purpose, by written instrument duly registered, to name and appoint a successor or successors to execute this trust, such appointment to be evidenced by writing, duly acknowledged; and when such writing shall have been registered, the substituted trustee named therein shall thereupon be vested with all the right and title, and clothed with all the power of the Trustee named in this Deed of Trust and such like power of substitution shall continue so long as any part of the debt secured by this Deed of Trust remains unpaid.

NOTICES. Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

GRANTOR'S ADDITIONAL WAIVERS. To the extent permitted by applicable law, Grantor also expressly waives all benefits, claims, rights and defenses Grantor may have or acquire that are based on: (A) any statutory or common law provision limiting the liability of or requiring the discharge or exoneration of a guarantor or surety; (B) suretyship or impairment of collateral, including any benefits, claims, rights or defenses Grantor may have or acquire pursuant to sections 3-419 and 3-605 of the Uniform Commercial Code as adopted and amended from time to time by the various states; (C) any statutory or common law provision that releases, discharges, or limits the liability of a remaining obligor following the release of a joint obligor; (D) homestead or exemption laws and any rights thereunder with respect to any collateral taken as security for the indebtedness; (E) any "one action," "anti-deficiency" or other statutory or common law provision limiting the right of Lender to obtain a judgment against or to otherwise proceed against any person or entity obligated for payment of the indebtedness (including Grantor, if that is the case), whether before or after the foreclosure, sale or other disposition of any collateral taken as security for the indebtedness; and (F) any legal or equitable doctrine or principle of marshalling. Lender shall not be required to sell or dispose of collateral in inverse order of alienation or in any other particular order. Without affecting or lessening Lender's rights under this instrument, Lender may do or not do any of the following with respect to the indebtedness or Note without Grantor's knowledge, consent or joinder: (A) grant extensions of time for payment, (B) grant renewals, (C) permit modifications of payment terms or other terms or conditions, (D) permit assumptions of the indebtedness or Note, (E) release one or more borrowers or guarantors from liability, and (F) exchange or release any collateral or other security.

RIGHT TO CURE. Prior to accelerating the indebtedness secured by this instrument, Lender shall give such notice and opportunity to cure as may be required by the Note or Credit Agreement secured by this instrument. The provisions of this section shall not

**DEED OF TRUST
(Continued)**

Page 7

supersede or limit the application of any controlling provisions of state law concerning notice of default, the right to cure, or the right to reinstate, and nothing in this instrument shall be deemed a waiver of those provisions; provided, however, that the provisions of the Note or Credit Agreement and any such state law requirements shall run concurrently.

ADDITIONAL COLLATERAL; SECURITY AGREEMENT. Grantor hereby grants and conveys to Lender a Uniform Commercial Code security interest in the following additional collateral (collectively, the "Additional Collateral"), whether now owned or hereafter acquired by Grantor: (a) all Personal Property, (b) all Rents, (c) all building materials, supplies, inventory, equipment, fixtures, furnishings and/or other goods (but excluding any household goods) intended for use, used, or usable in the construction, repair, renovation, operation or maintenance of improvements constructed or to be constructed on the Real Property, (d) all construction, engineering, and architectural contracts and all plans, drawings and specifications relating to the construction, repair or renovation of improvements on the Real Property, and (e) all attachments, accessories and accessions to any of the foregoing and all replacements of and proceeds from the foregoing. This instrument shall constitute a Security Agreement as to the Additional Collateral, and Lender shall have all of the rights with respect thereto of a secured party under the Uniform Commercial Code as enacted and amended from time to time in the state in which the Real Property is located. Lender is authorized to file at Grantor's expense such financing statements and other filings as Lender shall deem appropriate to perfect and continue Lender's security interest in the Additional Collateral. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach any Additional Collateral from the Real Property, and Grantor shall assemble all Additional Collateral not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three days after receipt of written demand from Lender to the extent permitted by applicable law. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this instrument may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust. This provision is in addition to (and does not supersede) any other provision of this Deed of Trust granting Lender a security interest in personal property.

FUTURE ADVANCES. This Deed of Trust secures not only existing indebtednesses and advances made contemporaneously with the execution hereof, but also future advances, whether obligatory, or optional, or both, and whether made under open-end credit agreements or otherwise, to the same extent as if such future advances were made contemporaneously with the execution of this Deed of Trust, even if no advance is made at the time of the execution of this Deed of Trust and even if no indebtedness is outstanding at the time any advance is made. Any advances (whether obligatory, or optional, or both) made by Lender under the terms of any Note, Credit Agreement or other instrument or obligation secured by this Deed of Trust, or any modification, amendment, extension, or renewal thereof, together with interest thereon, shall be secured by this Deed of Trust. As used in this Deed of Trust, the term "obligatory" with respect to advances has the same meaning as that for "obligatory advance" as set forth in section 47-28-101(a)(8) of the Tennessee Code Annotated, and the term "optional" with respect to advances has the same meaning as that for "optional advance" as set forth in section 47-28-101(a)(9) of the Tennessee Code Annotated. The stated term for the duration of any open-end credit agreement secured by this Deed of Trust (including any extension thereof) shall not exceed a total of thirty years from the date of the original execution of this Deed of Trust. The initial term of any open-end credit agreement secured by this Deed of Trust will end on the maturity date of this Deed of Trust as stated in the definition of the term "Note" or "Credit Agreement" in the "DEFINITIONS" section of this Deed of Trust.

MODIFICATIONS AND EXTENSIONS. The terms of any Note, Credit Agreement or other instrument evidencing the indebtedness or any other obligation secured by this instrument may be changed from time to time by agreement between the holder(s) thereof and the parties obligated thereon as maker(s). Such changes may include, without limitation, the renewal, extension, modification, amendment, refinancing, restatement and/or increase of the obligation. For example, the holder(s) and maker(s) may agree to (a) increase or decrease the interest rate, (b) convert the obligation to or from a closed-end or an open-end obligation, (c) convert the obligation to or from a fixed interest rate obligation or an adjustable interest rate obligation, (d) increase or decrease the payment amount, (e) change the payment schedule, (f) extend or shorten the time during which future advances may be made, (g) advance and/or re-advance loan proceeds, (h) amortize a balloon payment, (i) extend or shorten the maturity date, (j) increase the principal amount, face amount, and/or credit limit of the instrument evidencing the obligation, and/or (k) any combination of the foregoing. To the extent permitted by law, the obligation as so changed from time to time and all future advances and re-advances relating thereto shall be and continue to be secured by this instrument with a priority as of the date this instrument is recorded, regardless of whether any record of such change is filed or recorded or when funds are advanced or re-advanced.

WAIVER OF IMPAIRMENT OF RECOURSE DEFENSES. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for the payment or performance of any obligation secured by this Deed of Trust, and without affecting Lender's rights with respect to any security not expressly released in writing, Lender may, at any time, and from time to time, either before or after the maturity of any obligation secured by this Deed of Trust, and without notice or consent: (a) release any person liable for payment or performance of all or any part of the indebtedness; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness (without limit as to the number of such extensions or the period or periods thereof), or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising any right Lender may have; (d) accept additional security of any kind; (e) release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the Property described in this Deed of Trust. Furthermore, Lender's failure to perfect any lien granted herein or in any of the Related Documents, to take any action to obtain payment or performance of the indebtedness or to exercise any rights or remedies available under this Deed of Trust shall not relieve Grantor or any other person from liability for the payment or performance of the indebtedness nor effect a discharge of the lien, security interest or assignment herein granted; it being intended that all "impairment of recourse" and "impairment of collateral" defenses are hereby waived.

NO MECHANICS' LIENS. Grantor shall discharge all claims for labor performed and material furnished to the Real Property, and shall not suffer any mechanic's or materialman's lien to be filed against any part of the Real Property. Lender has not consented and will not consent to any contract or to any work or to the furnishing of any materials which might be deemed to create a lien or liens superior to the lien of this Deed of Trust, either under section 65-11-108 of the Tennessee Code Annotated, or otherwise.

LIMITATION ON AMOUNT SECURED. Notwithstanding anything in this instrument to the contrary, any time the aggregate outstanding principal balance of the indebtedness (exclusive of those sums that, according to state law, are not to be considered in computing the maximum principal amount which may be secured by this instrument) exceeds the maximum principal amount that may be secured by this instrument any one time, the excess shall not be secured by this instrument. In addition, the term "indebtedness" shall not include, and this instrument shall not secure, any obligation or indebtedness for which disclosures are required under the federal Truth-in-Lending Act and its implementing regulations as promulgated by the Federal Reserve Board unless the required Truth-in-Lending disclosures were adequately given.

INFORMATION ABOUT OTHER LIENS. Lender is authorized to obtain such information about other liens or claims of lien on the Real Property as Lender may reasonably request from the each creditor or other person or entity that has, claims to have, or asserts a lien on the Real Property. The information requested may include, but is not limited to, the nature of the lien or claim of lien, the circumstances under which the lien or claim of lien arose, and the amount required to satisfy the lien or claim of lien. The creditors or other persons or entities that have, claim to have, or assert a lien on the Real Property are authorized and directed to promptly provide to Lender the information requested by Lender. This provision applies whether the lien or claim of lien is superior or subordinate in priority to the lien of this instrument.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

**DEED OF TRUST
(Continued)**

Page 8

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Tennessee without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Tennessee.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waive Jury. All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Miscellaneous Waivers. Grantor waives all right of homestead, equity of redemption, statutory right of redemption, and relinquishes all other rights and exemptions of every kind, including, but not limited to, a statutory right to an elective share in the Property.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means First-Citizens Bank & Trust Company, and its successors and assigns.

Borrower. The word "Borrower" means DMT PROPERTIES LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Tennessee Hazardous Waste Management Substances Act of 1998, T.C.A., 68-212-201, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Existing Indebtedness. The words "Existing Indebtedness" mean the indebtedness described in the Existing Liens provision of this Deed of Trust.

Grantor. The word "Grantor" means DMT PROPERTIES LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes

DEED OF TRUST
(Continued)

Page 9

affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means First-Citizens Bank & Trust Company, its successors and assigns.

Note. The word "Note" means the promissory note dated December 14, 2016, in the original principal amount of \$500,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of the Note is April 14, 2017.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means Jeffrey C. Parlier, whose address is Knoxville, TN and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

DMT PROPERTIES LLC

By: Matthew Lowrance
MATTHEW LOWRANCE, Member of DMT PROPERTIES LLC

By: David Montgomery
DAVID MONTGOMERY, Member of DMT PROPERTIES LLC

By: Thomas Browning
THOMAS BROWNING, Member of DMT PROPERTIES LLC

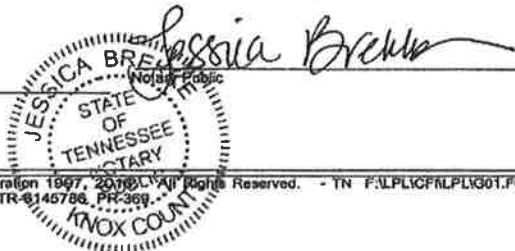
LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

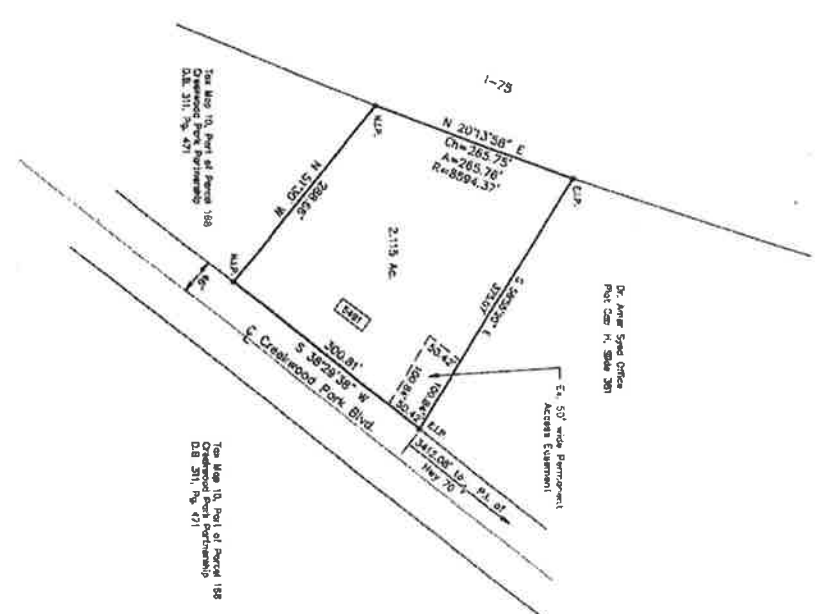
STATE OF Tennessee)
COUNTY OF KNOX) ss
)

Before me, Jessica Brekke, a Notary Public in and for said State and County, personally appeared MATTHEW LOWRANCE, Member of DMT PROPERTIES LLC; DAVID MONTGOMERY, Member of DMT PROPERTIES LLC; and THOMAS BROWNING, Member of DMT PROPERTIES LLC, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be a member of or other authorized signer for DMT PROPERTIES LLC, the within-named bargainer, a Limited Liability Company, and that they as such member or other authorized signer executed the foregoing instrument for the purposes therein contained, by signing the name of the Limited Liability Company by themselves as such member or other authorized signer.

WITNESS my hand and seal at office, on the 14 day of December, 2018

My Commission Expires: 5/16/18

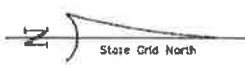




BRIDGE CADDIS-34

PROJECT NUMBER	16007288
DATE	09/27/16
PROJECT LOCATION	2343 RECREATION CIRCLE, LENOIR, TN 37554
PROJECT DESCRIPTION	RECREATION CIRCLE
PROJECT STATUS	IN PROGRESS
PROJECT OWNER	LENOIR CITY
PROJECT CONTACT	JOHN SULLIVAN
PROJECT PHONE	423-740-0150
PROJECT FAX	423-740-0150
PROJECT EMAIL	jsullivan@lenoir-tn.gov
PROJECT WEBSITE	www.lenoir-tn.gov

- NOTES:**
1. NO. OF LOTS - 1
 2. LOTS SHOWN - 2.00 ACRES
 3. 60% FMS AT ALL CORNERS
 4. 10% FMS AT ALL CORNERS
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CERTIFICATE OF APPROVAL OF STREET NAMES AND ADDRESS

I hereby certify that (1) the names of existing public roads shown on this subdivision plat are correct, (2) the names of any new roads and any new road segments are correct, and (3) the proposed names of the lots shown on this plat are in accordance with the E-811 System.

John Sullivan
 Supervisor



SUPERVISOR:
 JOHN SULLIVAN
 2343 RECREATION CIRCLE
 LENOIR, TN 37554
 PH: 423-740-0150

OWNER:
 OREXWOOD PARK PARTNERSHIP
 2343 RECREATION CIRCLE
 LENOIR, TN 37554
 PH: 740-0150

DISTRICT 5 - LONDON CO., TENN.
SCALE: 1"=100' **SEPT. 23, 2016**

CERTIFICATE OF OWNERSHIP AND REDUCTION	CERTIFICATE OF ACCURACY	CERTIFICATE OF APPROVAL FOR RECORD	CERTIFICATION OF STREETS	CERTIFICATION OF WATER SYSTEM	CERTIFICATION OF SEWAGE SYSTEM
I certify that the owner of the property shown on this subdivision plat has been duly notified of the proposed subdivision and has been given the opportunity to be heard at a public hearing held by the Regional Planning Commission. I further certify that the owner has been duly notified of the proposed subdivision and has been given the opportunity to be heard at a public hearing held by the Regional Planning Commission.	I certify that the plat shown on this subdivision plat is a true and correct copy of the original plat as filed with the Regional Planning Commission. I further certify that the plat has been duly filed with the Regional Planning Commission.	I certify that the plat shown on this subdivision plat is a true and correct copy of the original plat as filed with the Regional Planning Commission. I further certify that the plat has been duly filed with the Regional Planning Commission.	I certify that the plat shown on this subdivision plat is a true and correct copy of the original plat as filed with the Regional Planning Commission. I further certify that the plat has been duly filed with the Regional Planning Commission.	I certify that the plat shown on this subdivision plat is a true and correct copy of the original plat as filed with the Regional Planning Commission. I further certify that the plat has been duly filed with the Regional Planning Commission.	I certify that the plat shown on this subdivision plat is a true and correct copy of the original plat as filed with the Regional Planning Commission. I further certify that the plat has been duly filed with the Regional Planning Commission.
Date: <u>9-27-16</u> County: <u>Lenoir</u>	Date: <u>9-27-16</u> Surveyor: <u>John Sullivan</u>	Date: <u>9-27-16</u> Surveyor: <u>John Sullivan</u>	Date: <u>9-27-16</u> Surveyor: <u>John Sullivan</u>	Date: <u>9-27-16</u> Surveyor: <u>John Sullivan</u>	Date: <u>9-27-16</u> Surveyor: <u>John Sullivan</u>

LENOIR CITY EYE CENTER

LENOIR CITY	REGIONAL PLANNING COMMISSION
TOTAL ACRES 2.00	TOTAL LOTS 1
ACRES NEW ROAD 0	ACRES NEW ROAD 0
OWNER OREXWOOD PARK PARTNERSHIP	DISTRICT 5
SUPERVISOR JOHN SULLIVAN	CLOSURE ERROR 1:10,000

SCALE 1"=100'

DMT Properties, LLC
TAX ID # 81-3686450

**Square footage of Facility Allocated
by Utilization per Floor Plan:**

	Lease Sq ft	OWNERS		
		D. Montgomery	M. Lowrance	T. Browning
		50 % of Lease sq ft	25 % of Lease sq ft	25 % of Lease sq ft
Medical Clinic-LC Eye Center	8,211	4,106	2,053	2,053
		0 % of Lease sq ft	50 % of Lease sq ft	50 % of Lease sq ft
Eye Surgery Center	3,821			
Garage & Admin Office/Travel Team	582			
Subtotal	4,403	-	2,202	2,202
Total Sq Ft	12,614	4,106	4,254	4,254
% Total	100.00%	32.55%	33.73%	33.73%
Round to		33.33%	33.33%	33.33%
Current DMT % through 12/31/2016	100.00%	50.00%	25.00%	25.00%
Proposed DMT % @ 1/1/2017	100.00%	33.33%	33.33%	33.33%

OPTION TO LEASE AGREEMENT

THIS OPTION TO LEASE AGREEMENT made and entered into this 2nd day of July 2018, by and between Optionor, DMT Properties, LLC and Optionee, Eye Surgery Center of Lenoir City, LLC.

WITNESSETH

WHEREAS, Optionor owns and desires to lease to Optionee, and Optionee desires to lease certain Leased Premises located in the structure at 5491 Creekwood Park Blvd., Lenoir City, Tennessee (the "Medical Office Building") and

WHEREAS, Optionor desires to enter into an option to lease agreement with Optionee whereby Optionor grants to Optionee the option to lease approximately 3,889 square feet of the Medical Office Building-Suite B as indicated in the Space Plan prepared by UrbanArch Associates, P.C.- Architects set forth in Exhibit A.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION I GRANT OF OPTION

- 1.1 Optionor hereby grants the Optionee an exclusive option to lease the Leased Premises, upon the terms and conditions set forth herein.
- 1.2 The term of Optionee's option to Lease the space shall commence on the date hereof and shall continue for a period of twelve (12) months from the date hereof (the "Option Period"). The Option Period may be extended at any time prior to its expiration upon the mutual consent of the parties.
- 1.3 Optionee shall exercise its option to Lease the space by delivering written notice to Optionor within the Option Period by registered certified mail, or in person.

SECTION II TERMS AND CONDITIONS OF THE LEASE

- 2.1 The parties agree to execute a formal lease agreement as set forth in Exhibit A (Lease Agreement & Space Plan) attached, subject to the terms and conditions contained in Section 2.2.
- 2.2 The execution of this Lease Agreement is conditional upon the approval and issuance of a Certificate of Need (CON) to Optionee from the State of Tennessee Health Services and Development Agency. The parties agree to execute the Lease Agreement within five (5) days of receipt of Certificate of Need (CON) by Optionee.

SECTION III MISCELLANEOUS PROVISIONS

- 3.1 Any notices required or permitted herein shall be addressed as follows:

As to Optionor:

DMT Properties, LLC
149 Kelsey Ln
Suite #104
Lenoir City, TN 37772
Attn: David N. Montgomery, OD - Member
Attn: Thomas A. Browning, MD - Member
Attn: Matthew D. Lowrance, DO - Member

As to Optionee:

Eye Surgery Center of Lenoir City, LLC
5491 Creekwood Park Blvd
Suite B
Lenoir City, TN 37772
Attn: Matthew D. Lowrance, DO

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by such party, as of the date first above written.

OPTIONOR:

DMT PROPERTIES, LLC

By:



Name/Title:

David N. Montgomery, OD - Chief Manager


Date:

7/02/2018

OPTIONEE:

EYE SURGERY CENTER OF LENOIR CITY, LLC

By:



Name/Title:

Matthew D. Lowrance, DO - Managing Member

Date:

7/02/2018

EXHIBIT "A"

SEE LEASE AGREEMENT AND SPACE PLAN ATTACHED.

FLOOR PLAN - EYE SURGERY CENTER OF LENOIR CITY

5491 CREEKWOOD PARK BLVD, LENOIR CITY, TN 37772



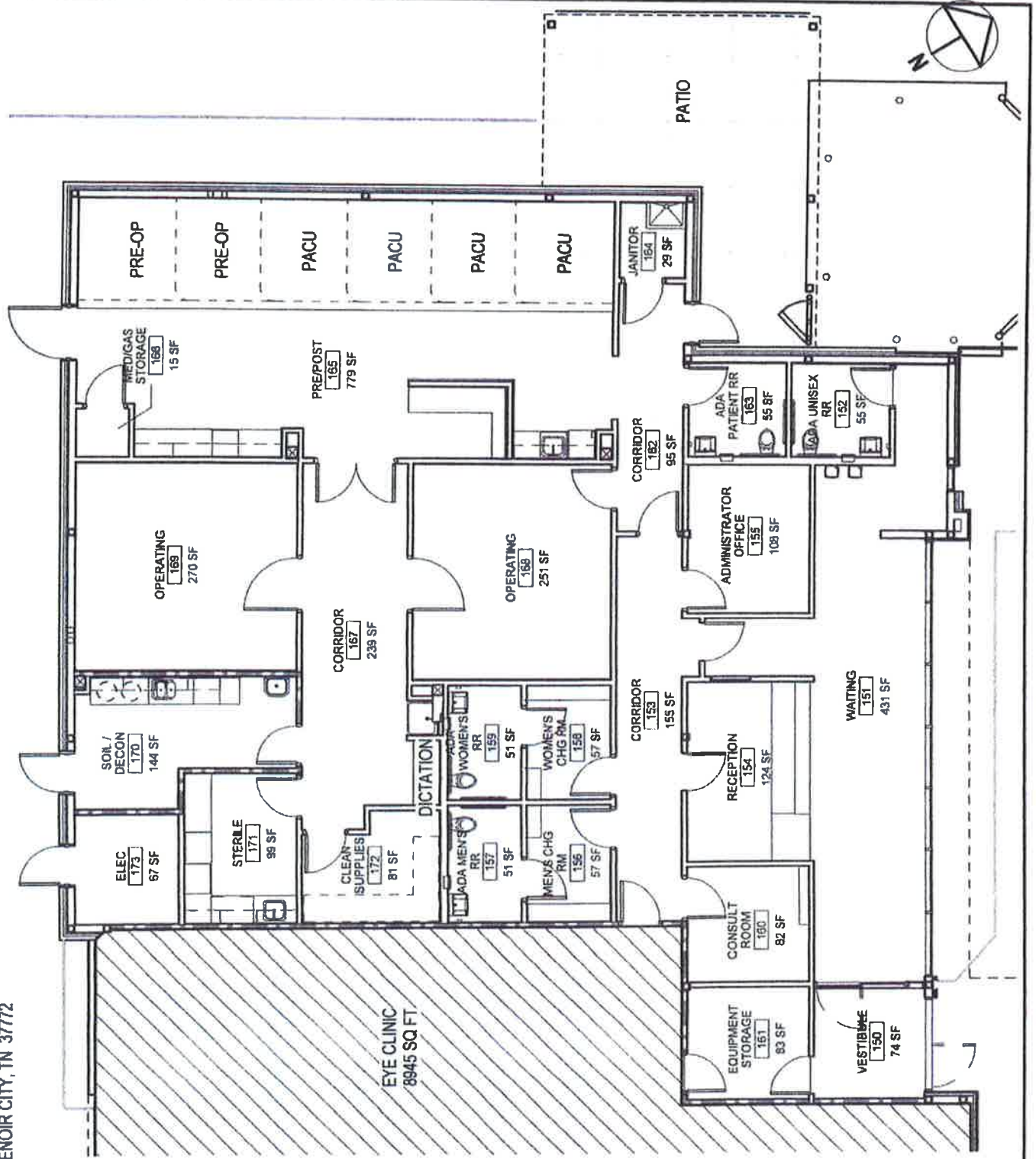
EYE SURGERY CENTER
OF LENOIR CITY

5491 CREEKWOOD PARK BLVD
LENOIR CITY, TN 37772

FLOOR PLAN

BUILDING GROSS AREA:
12,834 SQ FT

SURGERY CENTER AREA:
3889 SQ FT



LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made as of the date stated in the Summary Section of this Lease by DMT Properties, LLC, a Tennessee limited liability company ("Landlord") and Eye Surgery Center of Lenoir City, LLC, a Tennessee limited liability company ("Tenant").

1. **Agreement.** Landlord leases the Premises (as that term is defined in Section 2) to Tenant, and Tenant leases the Premises from Landlord, according to the terms of this Lease.

2. **Premises and Common Areas.**

2.1 **Premises.** The term "Premises" shall mean the space described in the Summary Section of this Lease. The term "Building" as used herein shall mean the building in which the Premises are located.

2.2 **Common Areas.** The term "Common Areas" shall mean any parking areas, driveways, entrances and exits thereto, service roads, loading facilities, sidewalks, ramps, landscaped areas, exterior stairways and all other areas constructed or to be constructed for use in common by the Tenant, other tenants and Landlord and their agents, employees and business invitees, subject to the terms of this Lease.

2.3 **Exception and Reservation.** Landlord reserves and excepts from the Premises the right in, over and upon the Premises as may be reasonably necessary or desirable for the servicing of the Premises or other portions of the Building, including the right to install, maintain, use, repair and replace pipes, duct work, conduits, utility lines and wires through hung ceiling space, column space and partitions in or beneath the floor slab or about or below the Premises or other parts of the Building.

3. **Term.**

3.1 **Term.** The base term of this Lease will be the period of time set out in the Summary Section of this Lease.

3.2 **Commencement Date.** The base term of this Lease will commence on the "Commencement Date" as set out in the Summary Section of this Lease. Notwithstanding, all of the terms and provisions of this Lease shall be binding upon the parties upon execution of this Lease.

4. **Rent.** Commencing on the Commencement Date, Tenant will pay Landlord monthly rent in the amount stated in the Summary Section of this Lease in equal consecutive monthly installments as stated in the Summary Section, to be paid on or before the first day of each month during the term of this Lease. The monthly rental installments will be paid in advance at the address specified for Landlord herein or such other place as Landlord designates, without prior demand and without any abatement, deduction or set off.

5. **Additional Expenses and Charges.**

5.1 **Proportionate Share.** Tenant's proportionate share of the Building is 30.00%.

5.2 **Common Area Maintenance.** Tenant shall pay its proportionate share of all Common Area Expenses ("CAM Expenses") during the term of this Lease for operating, equipping, policing and protecting, lighting, insuring, repairing, replacing and maintaining the Premises. Tenant's proportionate share of the Building is 30.00%. Such costs and expenses shall include, but shall not be limited to the following: utilities, except such costs which are payable by individual tenants; illumination and maintenance of signs; cleaning, lighting, snow removal and

landscaping; premiums for any insurance maintained, including liability, property and casualty; the cost of equipment used in the operation and maintenance of the Premises, and maintenance and repair of said equipment; compensation, and expenses paid to or on behalf of persons directly involved in the performance, management or administration of the work described herein; repair, maintenance and cleaning of Common Areas; operating costs; repairing and repaving of parking areas and driveways; expenses for repairs or replacements required by any regulatory or governmental agency; and all other costs or expenses, which would, under generally accepted account and principals, be regarded as maintenance and repair costs of Premises. The foregoing are examples of charges which shall be included within CAM Expenses and Landlord shall not be deemed to be required to perform such services, unless specifically required in this Lease. Tenant shall pay, with each monthly installment of rent, one-twelfth (1/12) of Landlord's estimate of such CAM Expenses.

5.3 **Taxes.** Tenant shall pay its proportionate share of all Taxes for all tax years beginning or ending during the term of this Lease. The term "Taxes" shall include all real estate taxes, ad valorem taxes, general and special assessments, taxes on real estate rental receipts, taxes imposed on Tenant's leasehold improvements and any other tax whether now or hereafter imposed upon or levied against real estate or upon owners of real estate (but not including taxes based on net income, estate or inheritance taxes, transfer taxes, mortgage taxes or recording fees) which are assessed or payable with respect to or applicable to the Premises, together with the reasonable costs (including fees of attorneys, consultants and appraisers) of any negotiation, contest or appeal pursued by Landlord in an effort to reduce the Taxes. Tenant's liability for proportionate share of Taxes shall be subject to a pro rata adjustment based upon the number of days of the Lease term falling with any particular tax year. Tenant shall pay, with each monthly installment of rent, one-twelfth (1/12) of Landlord's estimate of such Taxes.

6. **Utilities.** Tenant will pay the appropriate suppliers for all water, gas, electricity, light, heat, telephone, power, waste removal and other utilities and similar services used by Tenant on or from the Premises during the term, whether or not such services are billed directly to Tenant. In no event shall Landlord be liable for any interruption or failure in the supply of any such utilities or other services to the Premises, unless such interruption or failure is a direct result of Landlord's willful or wrongful act or gross negligence.

7. **Insurance.**

7.1 **Tenant Insurance Requirements.**

(a) **Property and Casualty Coverage.** Tenant will be responsible, at its sole expense, for obtaining and keeping in force during the term of this Lease property and casualty coverage insurance on all of Tenant's furniture, fixtures, equipment, inventory or other property located in or about the Premises. In no event shall Landlord be liable to Tenant for any insurable damage to any of Tenant's property.

(b) **General Liability.** Tenant will, at its sole expense, obtain and keep in force during the term of this Lease general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000.00) for injury to or death of any one person, for injury to or death of any number of persons in one occurrence and for damage to property, insuring against any and all liability of Landlord and Tenant, including coverage for contractual liability, broad form property damage, host liquor liability, and non-owned automobile liability, with respect to the Premises or arising out of the maintenance, use, or occupancy of the Premises. Such insurance will contain a provision that Landlord, although named as an insured, will nevertheless be entitled to recover under the policy for any loss, injury, or damage to Landlord, its agents, and employees, or the property of such persons. The minimum limits of the general liability insurance shall be subject to change, from time to time, after the first year of the Lease as shall be reasonably necessary for adequate protection based upon any requirements placed upon the Landlord by third parties or based upon custom and practice in the industry.

7.2 **Waivers.** Tenant waives all rights to recover against Landlord or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers or invitees of Landlord for any loss or damage arising from any cause covered by any insurance required to be carried pursuant to this Section or any other insurance actually carried by Tenant. Tenant will cause its respective insurers to issue appropriate waiver of subrogation endorsements to all policies of insurance carried in connection with the Premises or any contents. If applicable, Tenant will cause all other occupants of the Premises claiming by, under, or through Tenant to execute and deliver to Landlord a waiver of claims similar to the waiver in this paragraph and to obtain such waiver of subrogation endorsements.

8. **Use; Adherence to Rules.** The Premises will be used only for the purposes set forth in the Summary Section of this Lease, and for no other purpose. Tenant shall comply with Landlord's Rules and Regulations governing the Building and the Premises as set forth on Exhibit B.

9. **Compliance with Laws.** Tenant will not use or occupy, or permit any portion of the Premises to be used or occupied, in violation of any law, ordinance, order, rule, regulation, certificate of occupancy, or other governmental requirement. Tenant will comply with all laws, ordinances, orders, rules, regulations, and other governmental requirements relating to the use, condition, or occupancy of the Premises, and all rules, orders, regulations, and requirements of the board of fire underwriters or insurance service office, or any other similar body, having jurisdiction over the Premises.

10. **Assignments and Subleases.** Tenant may neither assign this Lease in whole or in part nor sublease all or any part of the Premises.

11. **Improvements to the Premises**

11.1 **Alterations.** Tenant will not perform any work or make any material alterations, additions or improvements to the Premises until after Landlord has approved, in writing, plans and specifications for any such work and any contractor engaged by Tenant to perform such work.

11.2 **Signs.** Upon termination of this Lease, Tenant shall remove such signage and repair any damage caused by such removal. All installation and removal of Tenant's signage shall be at Tenant's sole cost and expense.

11.3 **Liens.** Tenant shall keep the Premises and every part thereof free and clear of any and all liens for work or labor done, services performed, or materials or appliances used, furnished or incorporated into the Premises, or for any other obligations of any kind incurred by Tenant. Tenant shall at all times promptly and fully pay and discharge any and all claims on which any such lien may or could be based and shall indemnify Landlord against all such liens and claims of liens, including any suits or other proceedings pertaining thereto. Landlord hereby gives notice to any and all suppliers of material or labor or other lien claimants that they must look solely to the Tenant for payment and not Landlord or the Premises themselves. The Tenant's failure to remove any such lien as may be filed against the Premises within fifteen (15) days after the same is filed shall be deemed an event of default under this Lease.

12. **Repairs and Maintenance**

12.1 **Tenant's Obligations.** Tenant will, at its sole cost and expense, maintain the Premises during its occupancy (except that part Landlord has agreed to maintain as set forth in Section 12(b) below) in good and tenantable condition consistent with a first class building, and make all repairs to the Premises as needed. Tenant's obligations under this Section shall include, but not be limited to, modifying, repairing, replacing, installing and maintaining, as applicable, the following: items as are required by any governmental agency having jurisdiction thereof; interior walls and glass; the interior portions of exterior walls; HVAC; ceilings; utility meters; pipes and conduits within and outside the Premises; all fixtures; sprinkler equipment and other equipment within the Premises; the storefront and all exterior glass; all of Tenant's signs (both interior and exterior); locks and closing devices; all window sashes, casements or frames, doors and door frames; and any alterations, additions or changes performed by or on behalf of Tenant (whether structural or non-structural); provided that Tenant shall make no adjustment, alteration or repair of any part of any sprinkler or sprinkler alarm system in or serving the Premises without Landlord's prior approval. All broken glass, both exterior and interior, shall be promptly replaced by Tenant with glass of the same kind, size and quality. At Tenant's expense, Tenant shall be responsible for providing all janitorial, cleaning and pest control services within the Premises. All such services shall be provided in accordance with standards customarily maintained for similar first class buildings. Tenant shall permit no waste, damage or injury to the Premises. Tenant will not overload the electrical wiring serving the Premises and will install, at its expense, with Landlord's written approval, any additional electrical wiring required in connection with Tenant's apparatus. Landlord shall be under no obligation to make any repairs, replacements, reconstruction, alterations, or improvements to or upon the Premises or the mechanical equipment exclusively serving the Premises except as expressly provided for herein.

12.2 **Landlord's Obligations.** Landlord shall repair and maintain the foundation, slab subfloor, structural walls and roof of the Building in which the Premises are located, except for repairs for which Tenant is

obligated herein. Landlord shall begin efforts to make any repairs necessary within thirty (30) days after it has received written notice of the need for any such repairs. Landlord shall not be responsible for the cost of any repairs occasioned by the act or neglect of the Tenant, its agents, employees, invitees, licensees or contractors, and Tenant agrees to be responsible for, and promptly make, all such repairs.

13. **End of Term.** At the end of this Lease, Tenant will surrender the Premises in good order and condition, ordinary wear and tear excepted. Tenant may remove from the Premises any trade fixtures, equipment and movable furniture placed in the Premises by Tenant. Tenant will repair any damage occasioned by the removal of any signs, trade fixtures, equipment, furniture, alterations, additions or improvements. All signs, trade fixtures, equipment, furniture, alterations, additions or improvements not so removed will be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant or to any other person and without obligation to account for them.

14. **Damage and Destruction.**

14.1 **Partial Destruction.** In the event of the partial destruction of the Premises by fire or any other casualty, Landlord shall restore or repair said Premises with reasonable diligence. Landlord shall expend such sums as required to repair or restore the Premises to their condition immediately prior to the date of the destruction. Notwithstanding, Landlord shall not be obligated to expend any sums in excess of the insurance proceeds actually received by Landlord as a result of such damage or destruction. Tenant shall be responsible for all repairs and replacements of its furniture, fixtures and equipment and any improvements made by Tenant to the Premises.

14.2 **Substantial Destruction.** If the Premises shall be so damaged by fire or other casualty or happening as to be substantially destroyed, then Landlord shall have the option to terminate this Lease by giving Tenant written notice. If Landlord does not elect to cancel this Lease as aforesaid, then the same shall remain in full force and effect and Landlord shall proceed with reasonable diligence to repair and replace the Premises to substantially their condition prior to the date of destruction.

14.3 **Right of Termination.** Notwithstanding anything else to the contrary in this Lease, Landlord, at its option, may terminate this Lease on thirty (30) days notice to Tenant given within one hundred eighty (180) days after the occurrence of any one of the following: (i) the Premises and/or the Building shall be damaged or destroyed as a result of an occurrence that is not fully covered by Landlord's insurance; (ii) the Premises and/or the Building shall be damaged or destroyed and the cost to repair the same shall amount to more than twenty-five percent (25%) of the value thereof; (iii) the Premises and/or the Building shall be damaged or destroyed during the last year of the term; or (iv) the Building is damaged (whether or not the Premises are damaged) to such an extent that, in the sole judgment of the Landlord, the Building cannot be operated as an economically viable unit. If Landlord cannot repair damage within this paragraph within 180 days of occupancy, Tenant shall have the right to terminate Lease Agreement.

15. **Condemnation.**

15.1 **Total Taking.** If, by exercise of the right of eminent domain or by conveyance made in response to the threat of the exercise of such right (in either case a "Taking"), all of the Premises are taken, or if so much of the Premises are Taken that the Premises (even if the restorations described below were to be made) cannot reasonably be used by Tenant for its business operations, this Lease will end on the earlier of the vesting of title to the Premises in the condemning authority or the taking of possession of the Premises by the condemning authority (in either case the "Ending Date"). If this Lease ends according to this Section, rent will be appropriately prorated to the Ending Date.

15.2 **Partial Taking.** If, after a Taking, so much of the Premises remains that the Premises can reasonably be used by Tenant for its business operations (i) this Lease will end on the Ending Date as to the part of the Premises which is taken; (ii) rent will be appropriately allocated to the part of the Premises which is taken and prorated to the Ending Date; (iii) beginning on the day after the Ending Date, rent for so much of the Premises as remains will be reduced based on the area taken. Landlord shall make such restoration or repairs to the Premises as necessary to restore them as nearly as practical to their original condition; provided, however, Landlord shall not be obligated to spend any funds in excess of the condemnation award or amounts paid in lieu thereof for such restoration

or repair. Notwithstanding, in the event any portion of the Premises are Taken, Landlord may, at its option, terminate this Lease, and upon such termination neither party shall any further obligation to the other.

15.3 Allocation of an Award for a Taking. In no event shall Tenant have any right to receive any part of any condemnation award or amounts paid in lieu thereof, and Landlord shall be entitled to all of such amounts. Notwithstanding, Tenant may, to the extent separately awarded, recover for its trade fixtures and moving expenses from the condemning authorities.

16. Subordination.

16.1 General. This Lease and Tenant's rights under this Lease are subject and subordinate to any ground lease or underlying lease, mortgage, deed of trust or other lien, encumbrance, master or prime lease or indenture, together with any renewals, extensions, modifications, consolidations, and replacements, which now or at any subsequent time affect the Premises, any interest of Landlord in the Premises or Landlord's interest in this Lease and the estate created by this Lease (except to the extent that any such instrument expressly provides that this Lease is superior to it). This provision will be self-operative and no further instrument of subordination will be required in order to affect it. Nevertheless, Tenant will execute, acknowledge and deliver to Landlord, at any time and from time to time, upon demand by Landlord, such documents as may be reasonably requested by Landlord, any ground landlord or underlying lessor or any mortgagee or any holder of a deed of trust or other instrument described in this paragraph, to confirm any such subordination. If Tenant fails or refuses to execute, acknowledge or deliver any such document within fifteen (15) days after written demand, Landlord will be entitled to execute, acknowledge and deliver any such document on behalf of Tenant as Tenant's attorney-in-fact. Tenant constitutes and irrevocably appoints Landlord, its successors and assigns, as Tenant's attorney-in-fact to execute, acknowledge and deliver on behalf of Tenant any documents described in this Section. Landlord agrees to use reasonable efforts to provide a reasonable non-disturbance agreement from the holder of any such lease, mortgage, deed of trust or other such first lien or encumbrance, whereby such holder agrees that so long as Tenant is not in default under this Lease and attorns to such holder as provided herein, such holder shall not disturb Tenant's rights under this Lease.

16.2 Attornment. If any holder of any mortgage, indenture, deed of trust or other similar instrument described in this Section succeeds to Landlord's interest in the Premises, Tenant will pay to it all rents subsequently payable under this Lease. Tenant will, upon request of anyone so succeeding to the interest of Landlord, automatically become the Tenant of, and attorn to, such successor in interest without change in this Lease. Such successor in interest will not be bound by (i) any payment of rent for more than one month in advance, (ii) any amendment or modification of this Lease made without its written consent (after Tenant receives notice of such holder's interest), (iii) any claim made against Landlord prior to the date on which such successor succeeded to Landlord's interest, or (iv) any claim of offset of rent against the Landlord. Upon request by such successor in interest and without cost to Landlord or such successor in interest, Tenant will execute, acknowledge, and deliver an instrument or instruments confirming the attornment. If Tenant fails or refuses to execute, acknowledge or deliver any such instrument within fifteen (15) days after written request, such successor in interest will be entitled to execute, acknowledge and deliver any such document for behalf of Tenant as Tenant's attorney-in-fact. Tenant constitutes and irrevocably appoints such successor in interest as Tenant's attorney-in-fact to execute, acknowledge and deliver on behalf of Tenant any document described in this paragraph.

17. Landlord's Access. Landlord, its agents, employees and contractors, may enter the Premises at any time in response to an emergency and otherwise at reasonable hours and upon reasonable notice to inspect the Premises; exhibit the Premises to prospective purchasers, lenders or tenants; determine whether Tenant is complying with its obligations in this Lease; supply any other service which this Lease requires Landlord to provide; post notices of non-responsibility or similar notices; or make repairs which this Lease provides for Landlord to make. All such work will be done as promptly as reasonably possible and so as to cause as little interference with Tenant as reasonably possible. Tenant waives any claim on account of any injury or inconvenience, interference with Tenant's business, loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. No emergency entry to the Premises by Landlord by any means will be a forcible or unlawful entry into the Premises, a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any part of the Premises, nor will any such emergency entry entitle Tenant to damages or an abatement of rent or other charges which this Lease requires Tenant to pay. In addition, Landlord, its agents, employees and contractors, shall have unrestricted and total access to the Premises.

18. Indemnification, Waiver and Release.

18.1 Indemnification. Tenant indemnifies Landlord, its agents and employees against, and holds Landlord, its agents and employees harmless from, any and all demands, claims, causes of actions, fines, penalties, damages (including consequential damages), losses, liabilities, judgments and expenses (including, without limitation, attorneys' fees and court costs) incurred in connection with or arising from: (1) the use or occupancy of the Premises by Tenant or any person claiming under Tenant; (2) any activity, work, or thing, done or permitted or suffered by Tenant in or about the Premises; (3) any acts, omissions, or negligence of Tenant or any person claiming under Tenant or the contractors, agents, employees, invitees, or visitors of Tenant or any such person; (4) any breach, violation or nonperformance by Tenant or any person claiming under Tenant or the employees, agents, contractors, invitees or visitors of Tenant, or any such person of any term, covenant, or provision of this Lease or any law, ordinance, or governmental requirement of any kind; or (5) any injury or damage to the person, property or business of Tenant its employees, agents, contractors, invitees, visitors or any other person entering upon the Premises under the express or implied invitation of Tenant. If any action or proceeding is brought against Landlord, its employees or agents by reason of any such claim, Tenant, upon notice from Landlord, will defend the claim at Tenant's expense with counsel reasonably satisfactory to Landlord.

18.2 Waiver and Release. Tenant waives and releases all claims against Landlord, its employees and agents with respect to all matters for which Landlord has disclaimed liability pursuant to the provisions of this Lease. In addition, Tenant agrees that Landlord, its agents and employees will not be liable for any loss, injury, death or damage (including consequential damages) to persons, property or Tenant's business occasioned by theft; act of God; public enemy; riot; strike; insurrection; war; requisition; order of governmental body or authority; fire; explosion; falling objects; steam, water, rain or snow; leak or flow of water from the Premises or into the Premises or from the roof, street, subsurface or from any other place; the breakage, leakage, obstruction or other defects of any pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures; construction, repair or alteration of the Premises; or any acts or omissions of any visitor of the Premises except where the same is caused solely by the gross negligence or willful misconduct of Landlord.

19. **Covenant of Quiet Enjoyment.** So long as Tenant pays the rent and performs all of its obligations under this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.

20. **Limitation on Tenant's Recourse.** Tenant's sole recourse against Landlord and any successor to the interest of Landlord in the Premises is to the interest of Landlord and any such successor in the Premises. Tenant will not have any right to satisfy any judgment which it may have against Landlord or any successor from any other assets of Landlord or any such successor. In this paragraph the terms "Landlord" and "successor" include the trustees, shareholders, venturers, partners, and/or individuals composing the Landlord and/or any successor. Tenant acknowledges, confirms and agrees that its rights with respect to Landlord relate only to the interest of Landlord in the Premises, and do not relate to or reach any of the other assets of the trustees or trust constituting Landlord or of the beneficiaries of said trust.

21. **Default.**

21.1 **Events of Default.** The following occurrences are "events of default":

(a) Tenant defaults in the due and punctual payment of rent or any other charge or payment required under this Lease, and such default continues for five (5) days after written notice from Landlord (however, Tenant will not be entitled to more than one (1) notice of such a default during any twelve (12) month period, and if within twelve (12) months after any notice any other rent or charge is not paid when due, an event of default will have occurred without further notice);

(b) Tenant vacates or abandons the Premises;

(c) This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant or are taken upon or subjected to any attachments by any creditor of Tenant or claimant against Tenant, and such attachment is not stayed or discharged within fifteen (15) days after its levy;

(d) Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or makes an assignment for the benefit of creditors;

(e) Involuntary proceedings under any such bankruptcy laws or insolvency act or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of Tenant's property, and such proceeding is not stayed or dismissed or such receivership or trusteeship is not stayed or vacated within sixty (60) days after such institution or appointment; or

(f) Tenant breaches any of the other agreements, terms, covenants or conditions which this Lease requires Tenant to perform, and such breach continues for a period of thirty (30) days after written notice by Landlord to Tenant. Notwithstanding, if the breach is of a type which can be cured but cannot reasonably be cured within such thirty (30) day period, then an event of default shall not be deemed to have occurred if Tenant promptly commences such cure, and diligently prosecutes such cure to completion.

21.2 **Remedies.** If an event of default occurs, Landlord may, at its election:

(a) give Tenant written notice of termination of this Lease. Upon the date of such notice, or upon such other date as specified by Landlord therein, Tenant's right to possession of the Premises will cease and the Lease will be terminated, except as to Tenant's liability as set forth herein, as if the date fixed in such notice were the end of the term of this Lease. If this Lease is terminated pursuant to the provisions of this Subsection, Tenant will remain liable to Landlord for damages in an amount equal to the rent and other sums which would have been owing by Tenant under this Lease for the balance of the term if this Lease had not been terminated, less the net proceeds, if any, of any reletting, plus all other expenses incurred by Landlord described in this Section. Landlord will be entitled to collect such damages from Tenant monthly on the days on which the rent and other amounts would have been payable under this Lease if this Lease had not been terminated. In no event shall Tenant be entitled to any surplus.

(b) without demand or notice, re-enter and take possession of the Premises or any part of the Premises; repossess the Premises; expel the Tenant and those claiming through or under Tenant from the Premises; and remove the effects of both or either, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenants or conditions. If Landlord elects to re-enter as provided in this subsection or if Landlord takes possession of the Premises pursuant to legal proceedings or pursuant to any notice provided by law, Landlord may, from time to time, without terminating this Lease, relet the Premises in Landlord's or Tenant's name but for the account of Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such terms and conditions (which may include concessions of free rent, and the alteration or repair of the Premises) as Landlord, in its discretion, may determine. Landlord may collect and receive any such resulting rents for the Premises. Landlord will not be responsible or liable for any failure to relet the Premises, or any part of the Premises, or for any failure to collect any rent due upon such reletting. No such re-entry or taking possession of the Premises by Landlord will be construed as an election on Landlord's part to terminate this Lease unless a written notice of such express intention is given to Tenant. No notice from Landlord under this Lease or under a forcible entry and detainer statute or similar law will constitute an election by Landlord to terminate this Lease unless such notice specifically says so. Landlord reserves the right following any such re-entry or reletting, or both, to exercise its right to terminate this Lease by giving Tenant such written notice, and in that event the Lease will terminate as specified in such notice. If Landlord elects to take possession of the Premises according to this subsection without terminating the Lease, Tenant will pay Landlord the rent and other sums which would be payable under this Lease if such repossession had not occurred, less the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's expenses incurred in connection with such reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration, remodeling and repair costs, and expenses of preparation for such reletting. Tenant will pay such amounts to Landlord monthly on the days on which the rent and all other amounts owing under this Lease would have been payable if possession had not been retaken and Landlord will be entitled to receive the rent and other amounts from Tenant on each such day.

(c) Landlord may, whether or not the Lease is terminated, in addition to demanding and being entitled to recover past due rents and any other damages, accelerate all future rents due under this Lease for the remainder of the term, whereupon the same shall become immediately due and payable. If the remaining term of the Lease upon such acceleration is one year or less, then all such rents and other charges shall be immediately due and payable without discount. To the extent that rent and other charges which are accelerated would have been due more than one year in the future, then such amounts shall be reduced by the amount which Tenant proves Landlord could reasonably recover from a replacement tenant or tenants, and the difference shall be discounted to present value at a discount rate of five (5%) per annum. In no event shall any amounts due within one year of the date of acceleration be reduced or discounted.

(d) Landlord may exercise any other remedies available in law or in equity and recover such damages or other relief as may be allowed by law or equity. Tenant specifically agrees that Landlord shall be entitled to an injunction to prevent Tenant from violations of this Lease or to require it to abide by and perform the terms and conditions provided herein. This provision shall specifically apply to Tenant's requirements to operate the Premises in the manner required herein.

21.3 **Cure.** If Tenant fails to pay when due any amounts payable under this Lease or to perform any of its other obligations under this Lease within the time permitted for its performance, then Landlord, after fifteen (15) days' written notice to Tenant (or, in the case of any emergency, upon such lesser notice or without notice, as may be reasonable under the circumstances), and without waiving any of its rights under this Lease, may (but will not be required to) pay such amount or perform such obligation. All amounts so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such obligations (together with interest from the date of Landlord's payment of such amount or incurring of each such cost or expense until the date of full repayment by Tenant) will be payable by Tenant to Landlord on demand. In the proof of any damages which Landlord may claim against Tenant arising out of Tenant's failure to maintain insurance, Landlord will not be limited to the amount of the unpaid insurance premium but rather Landlord will also be entitled to recover as damages for such breach the amount of any uninsured loss, damages, costs and expenses of suit, including attorneys' fees, arising out of damage to the Premises occurring during any period for which Tenant has failed to provide such insurance.

22.1 Holding Over. If Tenant remains in possession of the Premises after the end of this Lease, Tenant will occupy the Premises as a tenant at sufferance, subject to all conditions, provisions and obligations of this Lease in effect on the last day of the term and shall pay an additional \$1,000 per month in Base Rent.

22.2 Estoppel Certificate. Within no more than fifteen (15) days after written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord a certificate stating (i) that this Lease is unmodified and in full force and effect, or, if the Lease is modified, the way in which it is modified accompanied by a copy of the modification agreement; (ii) the date to which rental and other sums payable under this Lease have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, or, if such a default has not been cured, what Tenant intends to do in order to effect the cure, and when it will do so; (iv) that Tenant has no claim or offset against Landlord, or, if it does, stating the nature and amount of such claim or offset; (v) that there has been no assignment or subletting of this Lease or the Premises, or, if so, stating the date and nature of any such assignment or subletting and the identity of the assignee or sublessee; and (vi) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser of the Premises and any prospective mortgagee or beneficiary under any deed of trust or mortgage encumbering the Premises. If Landlord submits a completed certificate to Tenant, and if Tenant fails to object to its contents within fifteen (15) days after its receipt of the completed certificate, the matters stated in the certificate will conclusively be deemed to be correct. Furthermore, Tenant irrevocably appoints Landlord as Tenant's attorney-in-fact to execute and deliver on Tenant's behalf any completed certificate to which Tenant does not object within fifteen (15) days after its receipt.

22.3 No Waiver. No waiver of any condition or agreement in this Lease by Landlord will imply or constitute a further waiver of the same or any other condition or agreement. No act or thing done by Landlord during the term of this Lease will be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender will be valid unless in writing signed by Landlord. The delivery of Tenant's keys to any employee or agent of Landlord will not constitute a termination of this Lease unless Landlord has entered into a written agreement to that effect. No payment by Tenant, or receipt from Landlord, of a lesser amount than the rent or other charges stipulated in this Lease will be deemed to be anything other than a payment on account of the earliest stipulated rent. No endorsement or statement on any check, or any letter accompanying any check or payment as rent will be deemed an accord and satisfaction. Landlord may accept such check for payment without prejudice to Landlord's right to recover the balance of such rent or to pursue any other remedy available to Landlord. If this Lease is assigned, or if the Premises or any part of the Premises are sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant and apply the net amount collected to the rent reserved in this Lease. No such collection will be deemed a waiver of the covenant in this Lease against assignment and subletting; the acceptance of the assignee, subtenant or occupant as tenant; or a release of Tenant from the complete performance by Tenant of its covenants in this Lease.

22.4 Notices. Any notice, request, demand, consent, approval or other communication required or permitted under this Lease will be written and will be deemed to have been given (i) when personally delivered, (ii) on the second (2nd) business day after it is deposited in any depository regularly maintained by the United States Postal Service, postage prepaid, certified mail, return receipt requested, or (iii) on the date of delivery by a reputable overnight carrier, in any alternative addressed to Landlord or Tenant at the address noted on the Summary Section of this Lease. If no other address is given for Tenant, the address of the Premises shall be used. Either Landlord or Tenant may change its address for purposes of this paragraph by giving ten (10) days' prior written notice according to this Section. Notwithstanding anything herein to the contrary, if actual written notice is received, regardless of the means of transmittal, such notice shall be deemed to be acceptable and effective as proper notice under this Section 22.14.

22.5 Charges. Any and all payments, charges or other amounts owed by Tenant to Landlord under the terms of this Lease, including CAM Expenses and Taxes, shall be deemed to be additional rent.

22.6 Binding Effect. This Lease will inure to the benefit of, and will be binding upon, Landlord's and Tenant's successors and assigns, this Lease will inure to the benefit of the Tenant's successors and assigns only so long as the subletting, assignment or other transfer is permitted by this Lease.

22.7 Time of the Essence. Time is of the essence in this Lease.

22.8 Entire Agreement. This Lease, including any Exhibits and the Summary Section, constitute the entire agreement between the parties with regard to the Premises. Any prior writings or prior or contemporaneous oral agreements or discussions between the parties shall be deemed merged herein, and shall be of

no force or effect. Tenant acknowledges and represents that it has not relied upon any other agreements, statements or representations in connection with this Lease. No subsequent agreement shall be valid or enforceable unless in writing and signed by the party to be bound.

WHEREFORE, Landlord and Tenant have entered into this Lease to be effective as of the date stated in the Summary Section.

LANDLORD:

DMT PROPERTIES, LLC

By: _____
Name: _____
Its: _____

TENANT:

EYE SURGERY CENTER OF LENOIR CITY, LLC

By: _____
Name: _____
Its: _____

EXHIBIT A

Building Floor Plan

- Attached -

FLOOR PLAN - EYE SURGERY CENTER OF LENOIR CITY

5491 CREEKWOOD PARK BLVD, LENOIR CITY, TN 37772



EYE SURGERY CENTER
OF LENOIR CITY
5491 CREEKWOOD PARK BLVD
LENOIR CITY, TN 37772
FLOOR PLAN
BUILDING GROSS AREA:
12,834 SQ FT
SURGERY CENTER AREA:
3889 SQ FT

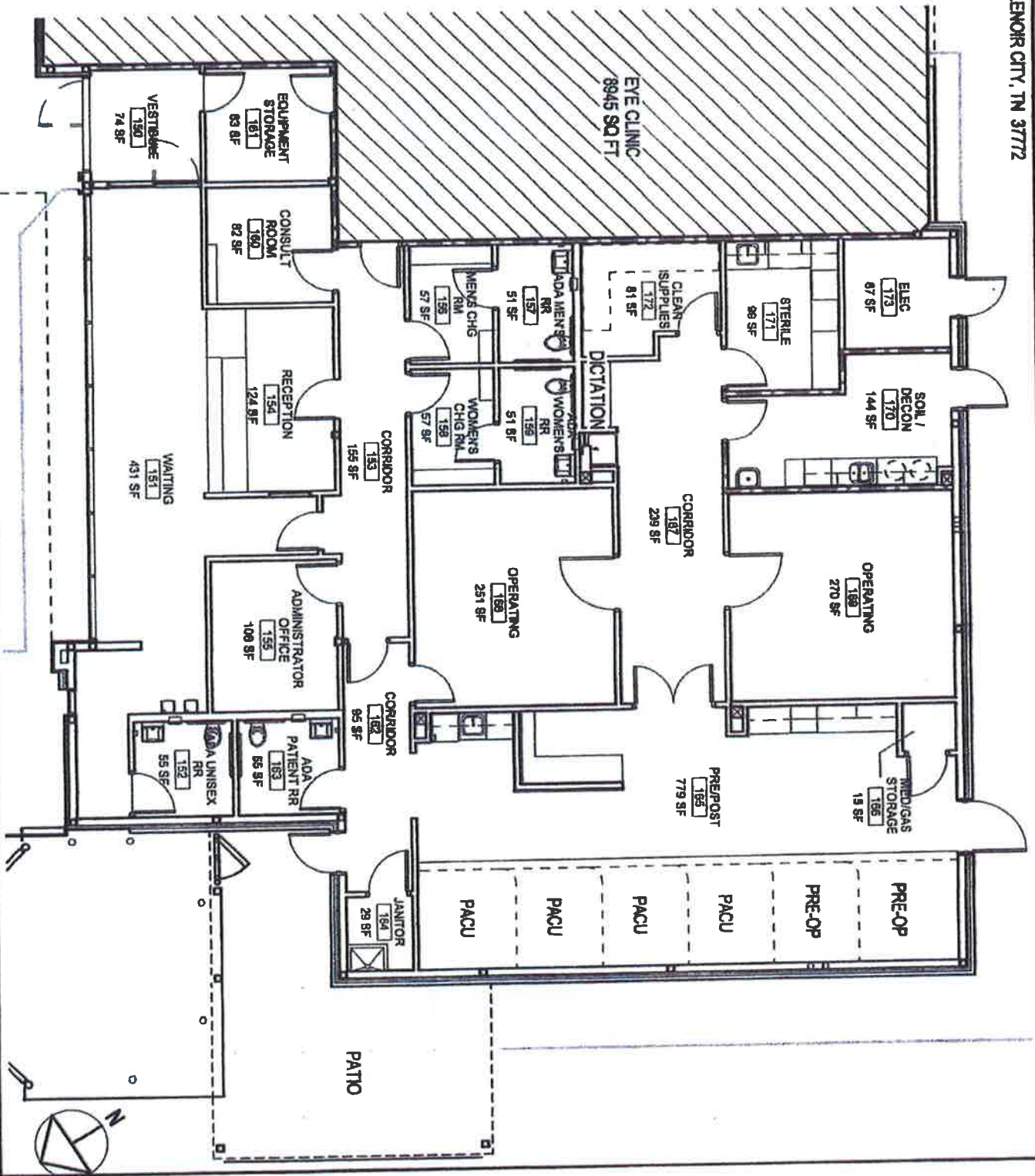


EXHIBIT B

Landlord's Rules and Regulations

A. Obstruction of Space:

No portion of Common Areas (including any sidewalk or exterior entranceway) shall be obstructed or encumbered by Tenant or used for any purpose whatsoever other than for ingress and egress to and from the space demised to Tenant.

B. Awnings or Projections:

No awning or other projection shall be attached to the outside wall or window of the building other than as first may be consented to by Landlord in writing. Landlord reserves the right to disallow any awning or projection of any kind in its entirety.

C. Signs; Showcases:

No sign, decals or lettering shall be exhibited, inscribed, painted or affixed on any part of the outside or

the like or other parts of the Building without the prior written consent of Landlord.

D. Washroom Facilities:

The washroom facilities and all plumbing fixtures shall not be used for any purposes other than those for which they are constructed and no sweepings, rubbish bags or other substances shall be thrown therein. Any damage arising from the misuse of plumbing fixtures shall be borne by Tenant.

E. Combustible Materials:

Neither Tenant nor any agent, servant, employee, licensee, visitor or customer shall at any time bring or keep at or about the Premises any flammable, combustible or explosive fluid, chemical or substances and Tenant shall obey all fire regulations and procedures governing the Premises and the Building.

F. Refuse:

Tenant shall maintain its Premises in a clean and sanitary condition. Tenant shall dry-wrap and deposit garbage and trash in the receptacles provided for that purpose. Tenant shall store all its trash and garbage in suitable receptacles within the Premises or in approved dumpsters, and shall be responsible for the removal and disposition of refuse and rubbish from the Premises. Tenant shall not permit the undue accumulation of rubbish, trash, garbage, debris, boxes, cans, or other refuse of any kind or description in the Premises, or in any other part of the Complex. Any dumpster will be of a type and be located as approved by Landlord. Tenant shall not burn any trash or garbage of any kind in or about the Premises or Complex.

G. Animals:

No animal of any kind shall be kept about the Premises or in any other portion of the Complex by Tenant or any agent, servant, employee or customer of Tenant.

H. Antennas, etc:

Without Landlord's prior written consent, Tenant shall not install or permit the installation of any antenna, satellite dish or other device on the roof of the Building or in any windows thereof or at the exterior of the premises or in the Premises generally.

I. Notice of Disorder:

Tenant shall immediately notify Landlord of any breakage, accident, fire or disorder which comes to the attention of Tenant.

J. HVAC:

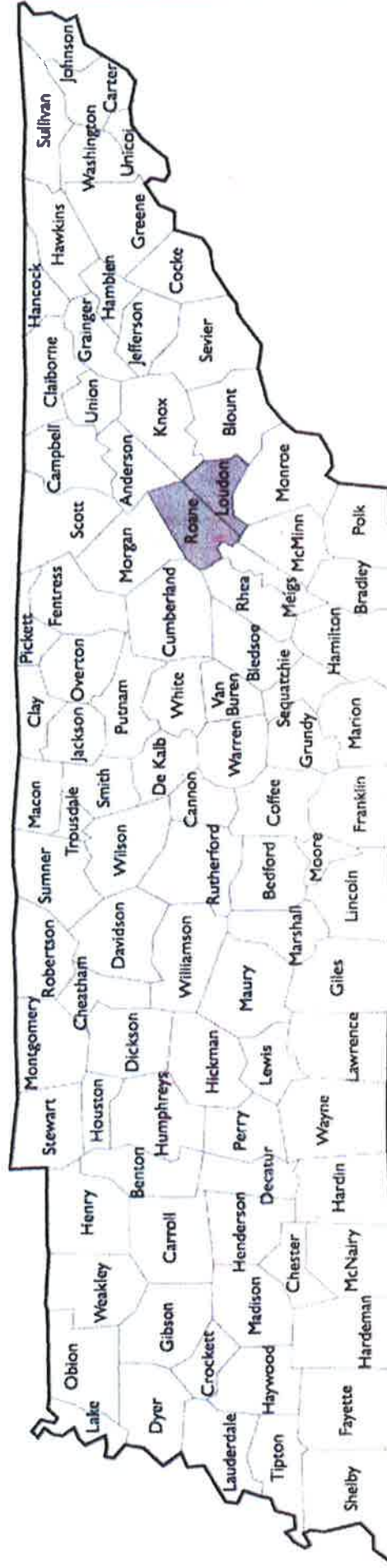
Tenant, at its expense, shall maintain a service contract with a Landlord approved service company on the HVAC serving the Premises, which shall require (i) all air conditioning filters to be changed at least four (4) times per year and (ii) the air conditioning system to be professionally inspected and generally serviced at least twice per year. Tenant shall provide Landlord with a copy of all such service contracts. If Tenant does not comply with the foregoing, then in addition to all other rights and remedies set forth in this Lease, Landlord shall be entitled to enter into a service contract on Tenant's behalf, and/or have Tenant's HVAC units serviced at Tenant's expense.

Attachment Section B-Need-3

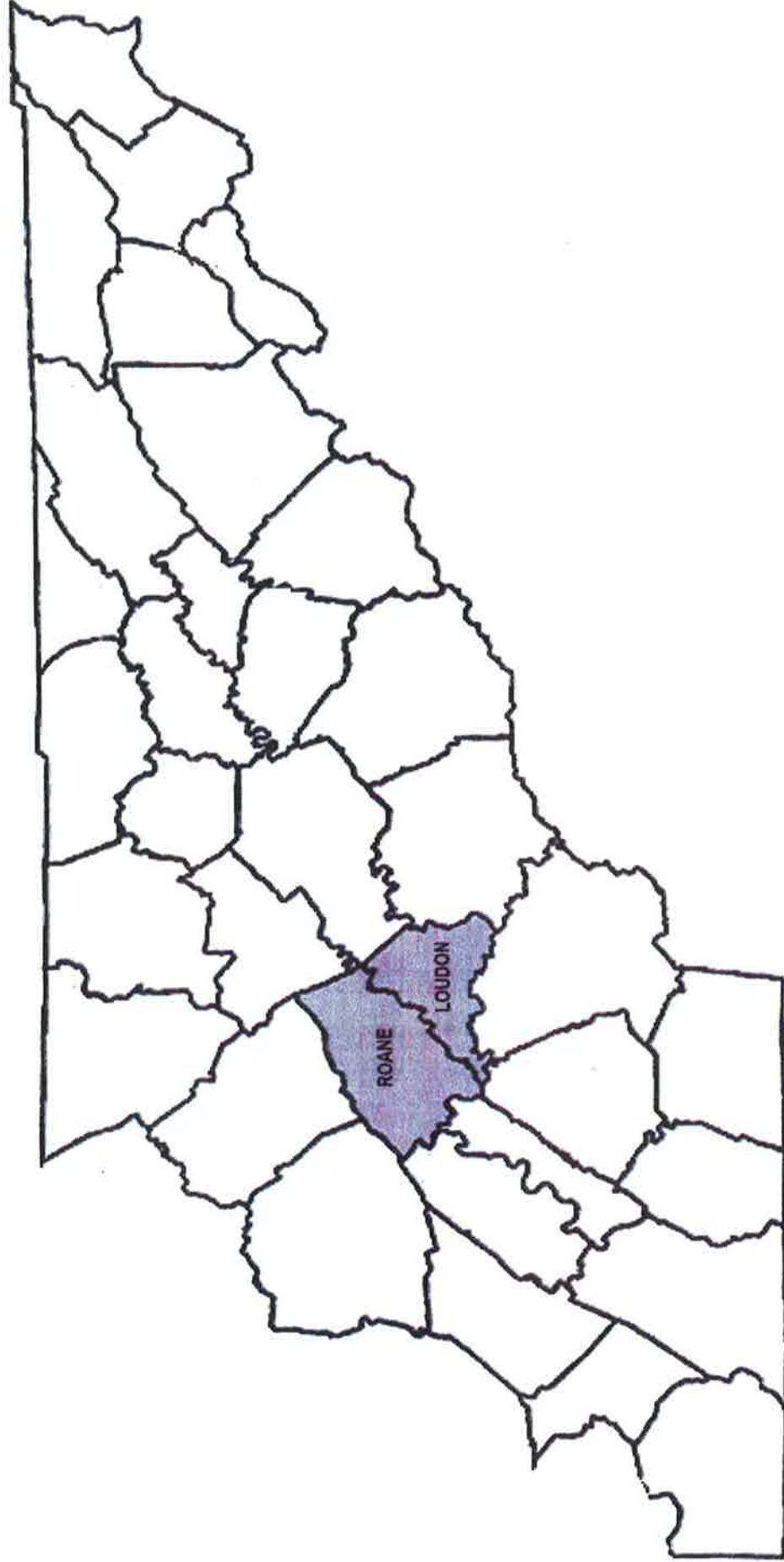
Service Area

PRIMARY SERVICE AREA EYE SURGERY CENTER OF LENOIR CITY

COUNTY LEVEL MAP



**PRIMARY SERVICE AREA
EYE SURGERY CENTER OF LENOIR CITY**



Attachment Section A-6B-1,a-d

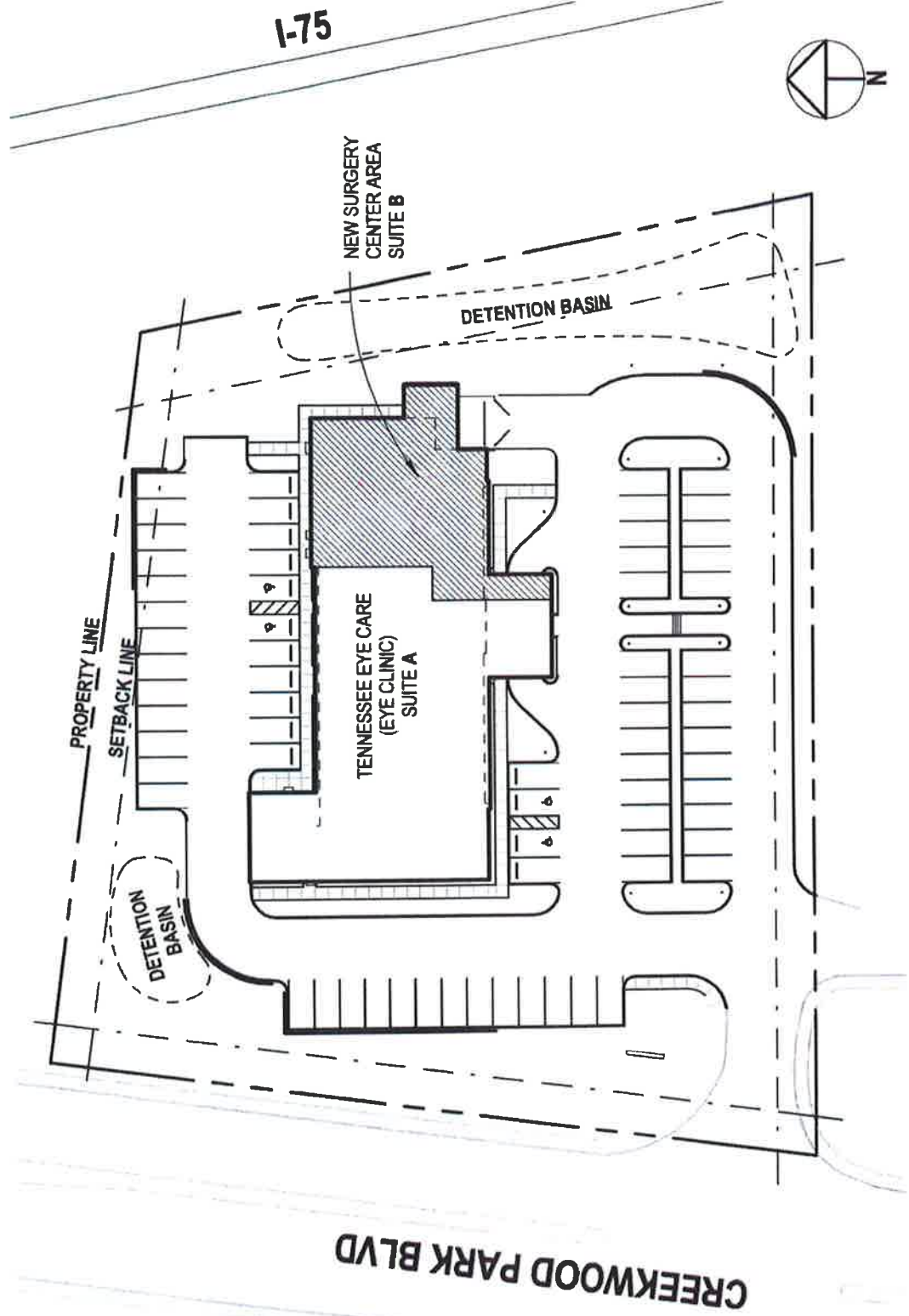
Plot Plan

PLOT PLAN - EYE SURGERY CENTER OF LENOIR CITY

5491 CREEKWOOD PARK BLVD, LENOIR CITY, TN 37772



TN HWY 321



TOTAL BUILDING
12,834 SQ. FT

TENNESSEE EYE CARE
OF LENOIR CITY- SUITE A
8,945 SQ. FT

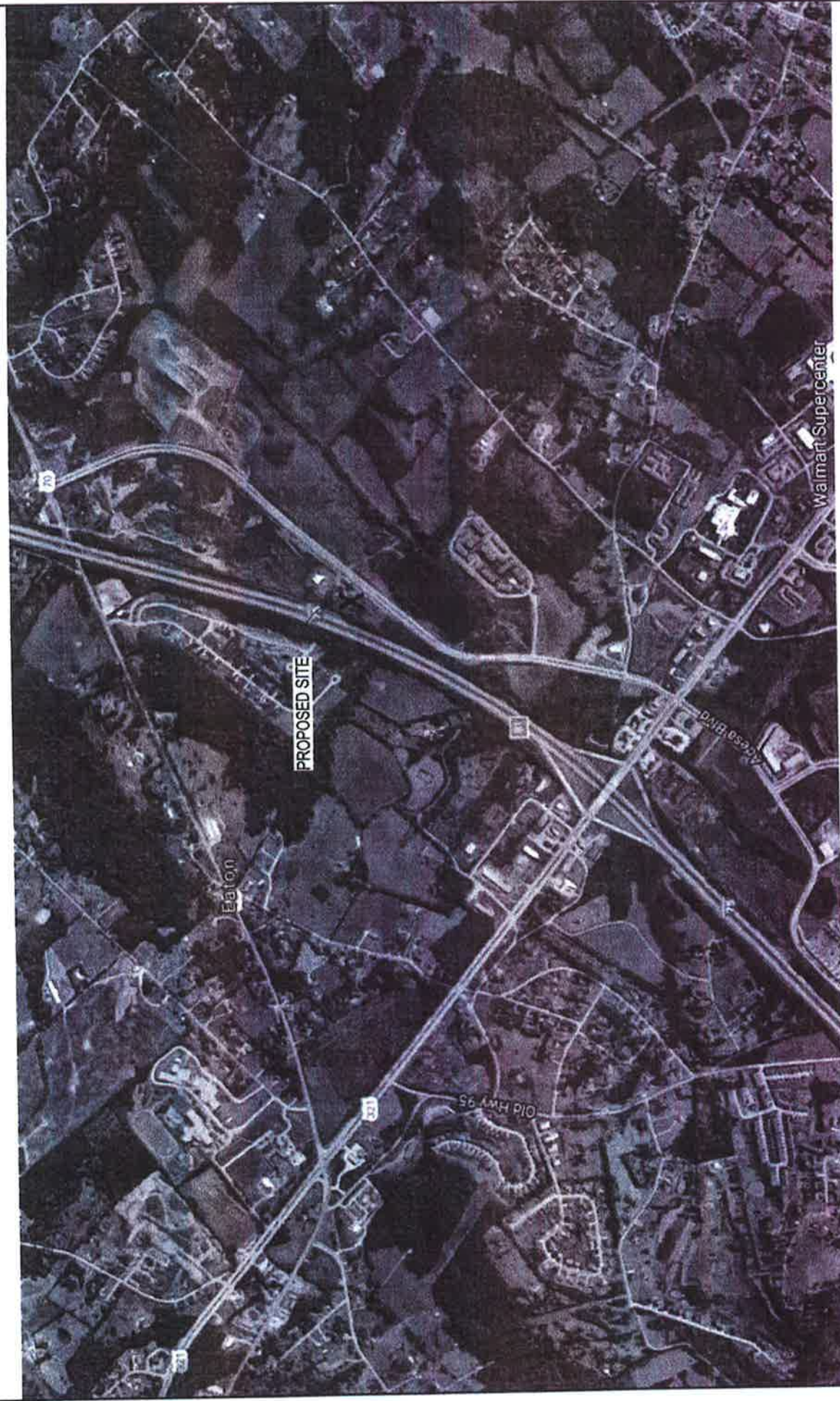
EYE SURGERY CENTER
OF LENOIR CITY- SUITE B
3,888 SQ. FT

5491 CREEKWOOD PARK BLVD
LENOIR CITY, TN 37772

PLOT PLAN

EXISTING SITE
2.10 ACRES

EYE SURGERY CENTER OF LENOIR CITY - ACCESSIBILITY OF PROPOSED SITE TO INTERSTATE I-75 & HWY 321
X=PROPOSED SITE AT 5491 CREEKWOOD PARK BLVD - LENOIR CITY, TN - LOUDON COUNTY



Attachment Section A-6B-2

Floor Plan

FLOOR PLAN - EYE SURGERY CENTER OF LENOIR CITY

5401 CREEKWOOD PARK BLVD, LENOIR CITY, TN 37772



EYE SURGERY CENTER
OF LENOIR CITY

5401 CREEKWOOD PARK BLVD
LENOIR CITY, TN 37772

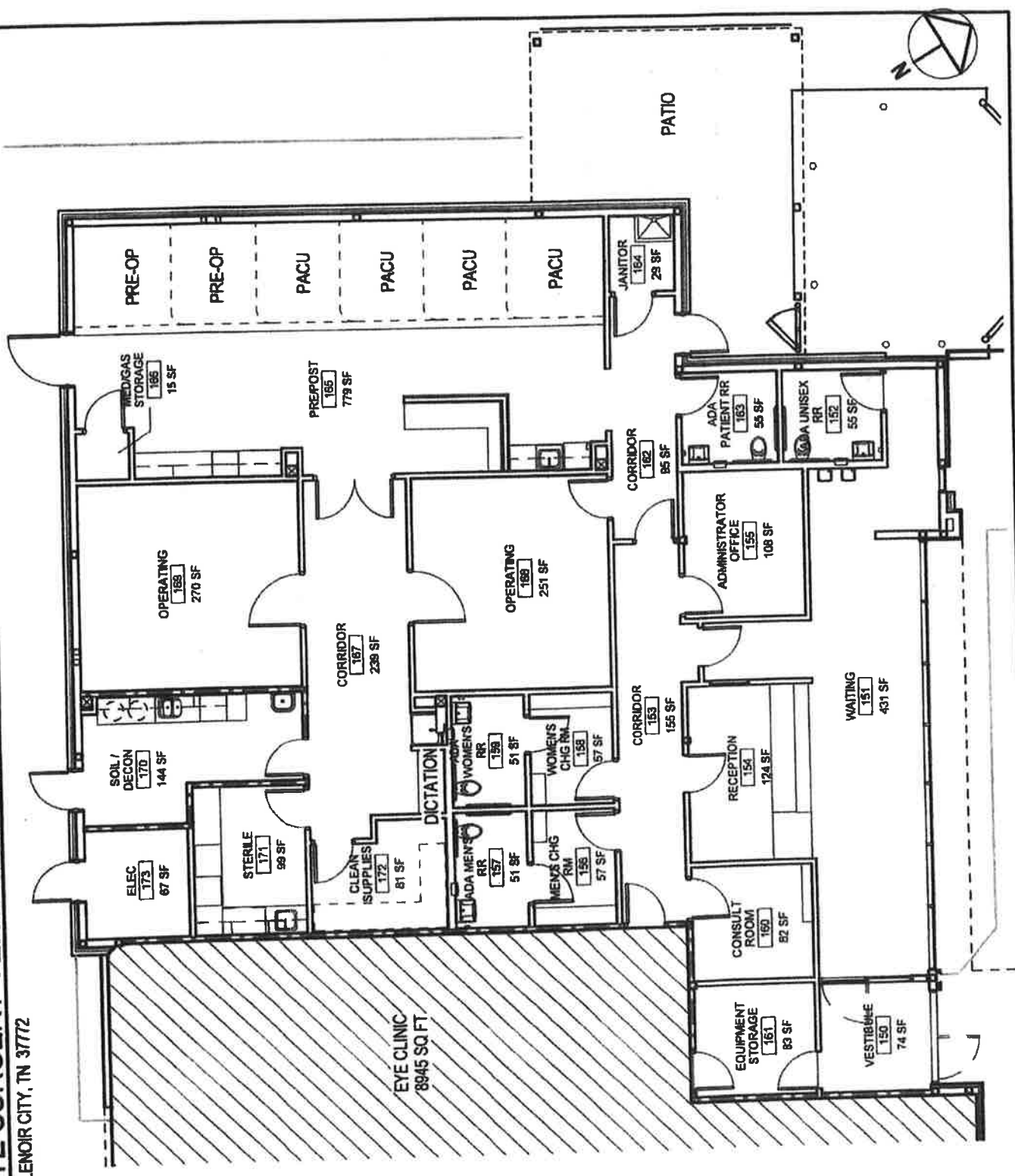
FLOOR PLAN

BUILDING GROSS AREA:

12,834 SQ. FT.

SURGERY CENTER AREA:

3669 SQ. FT.



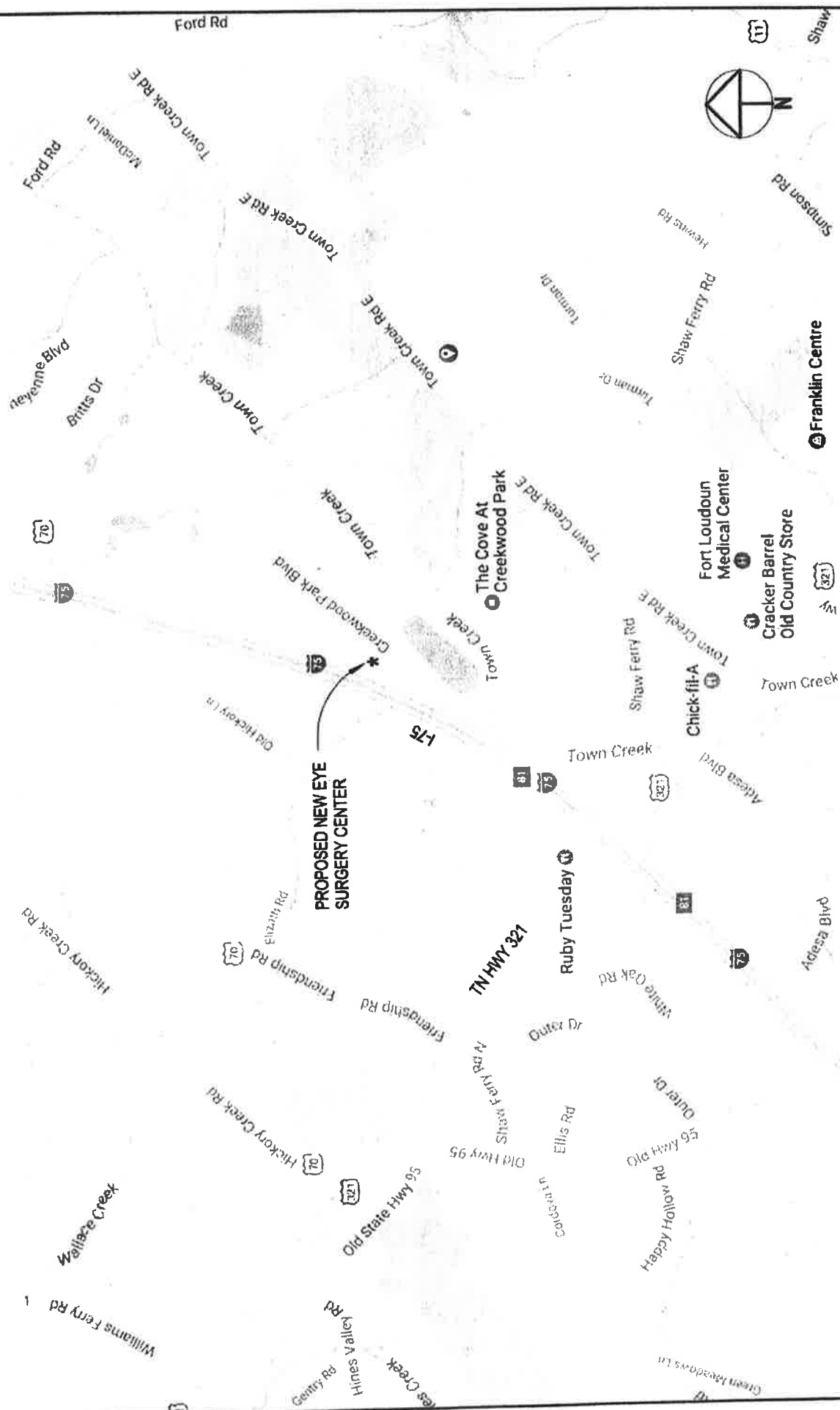
Attachment Section A-6B-3

Accessibility of Project Site

EYE SURGERY CENTER OF LENOIR CITY - ACCESSIBILITY OF PROPOSED SITE TO INTERSTATE I-75 & HWY 321
X=PROPOSED SITE AT 5491 CREEKWOOD PARK BLVD - LENOIR CITY,TN - LOUDON COUNTY



**EYE SURGERY CENTER OF LENOIR CITY - ACCESSIBILITY OF PROPOSED SITE TO INTERSTATE I-75 & HWY 321
PROPOSED SITE AT 5491 CREEKWOOD PARK BLVD - LENOIR CITY, TN - LOUDON COUNTY**



**Attachment Section B-Economic
Feasibility-1**

**Documentation of Construction Cost
Estimate**



July 6, 2018

Ms. Melanie M. Hill-Executive Director
Tennessee Health Services & Development Agency
502 Deaderick Street
Andrew Jackson Bldg., 9th Floor
Nashville, TN 37243

**RE: Eye Surgery Center of Lenoir City – 5491 Creekwood Park Boulevard,
Lenoir City, TN (Loudon County)
Project: Single Specialty-Ophthalmic Ambulatory Surgical Treatment Center (ASTC)
Documentation for CON Application**

Dear Ms. Hill:

On behalf of our client, Eye Surgery Center of Lenoir City, LLC we are pleased to address certain issues related to the proposed new construction of the above-referenced project.

Description of the Project-The proposed ASTC will be a single-specialty facility limited to eye surgery procedures and limited to patients not requiring general anesthesia. The proposed ASTC facility will be located adjacent to the owner's newly constructed eye clinic- Tennessee Eye Care of Lenoir City in the "shelled-in space", on approximately 2.1 acres of land on Creekwood Park Boulevard in Lenoir City, TN. Based on our preliminary floor plan and plot plan showing the building design (also being submitted with the CON Application) the total space for the ASTC will be approximately 3,889 square feet. The proposed ASTC space includes two (2) operating rooms, waiting room and reception area, administrative (business) office, Pre-Op/Post-Op Area with six (6) stations supervised by a central nursing station, consult room, equipment storage room, and other appropriate support areas. Please refer to floor plan for the project for additional information.

Estimate of Project Construction Cost-Based on our previous experience and knowledge with the construction of medical buildings and healthcare facilities and considering the current healthcare construction cost market for similar projects, it is our professional opinion that a projected construction cost of \$583,350 is a reasonable estimate for the completion and buildout of the shelled in space for the ASTC facility. This is based on our preliminary floor plan design for the ASTC of approximately 3,889 gross square feet at a construction cost rate of \$150.00 per square foot (exclusive of land, site development costs, and current building structure costs). In addition, we have recommended a contingency amount of an additional \$50,000 for construction costs for the ASTC project for an adjusted total of \$633,350 ASTC project cost. The ASTC space once completed would represent 30% of the total building (total building 12,834 sq. ft). The Tennessee Eye Care of Lenoir City- Eye Clinic would represent 70% or 8,984 sq. ft). Our proposed site design layout and plot plan which provides for 70 total parking spaces and six (6) handicapped parking spaces twenty-one (21) parking spaces assumed for the surgery center.

Suitability of Site for Proposed Project-The site for the proposed project is well suited for the planned ASTC development. As indicated on the plot plan submitted, the site is located in Loudon County at 5491 Creekwood Park Boulevard, Lenoir City, TN on a 2.1-acre parcel. The Creekwood Park Boulevard site is located adjacent to Pediatric Choice Medical Clinic and the University of Tennessee Regional Health Center is also located on Creekwood Park Blvd. The close proximity of the ASTC site to the Tennessee Eye Care clinic in Lenoir City (Louden County) and its nearby affiliated eye clinic in Harriman (Roane County) will provide convenience for the physicians and their patients needing eye surgery. The proposed ASTC site has good accessibility to US Interstate-75, Hwy 321, and other major highways and roads that serve the primary service area for the project (Loudon County and Roane County). See Accessibility Map which accompanies this letter. The plot plan indicates access to the site is available from Creekwood Park Boulevard. The parcel has designated water retention areas of approximately 0.2 acres so the remaining acreage (1.9 acres) was utilized for designing the site and facility design layout. In summary, the proposed site is well suited in all aspects for the ASTC facility being considered for development.

Attestation- We attest that the physical environment and all aspects of the ASTC project will conform to all applicable federal standards, manufacturer's specifications, and licensing agencies' requirements including the AIA Guidelines for Design and Construction of Hospital and Health Care Facilities in current use by the licensing authority.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Bullard", with a large, stylized loop at the end.

Brian Bullard, AIA, NCARB
Principal - UrbanArch Associates, P.C.
TN License #101492

**Attachment Section B-Economic
Feasibility-2**

**Documentation of Funding Resources for
Project**



forever first

July 6, 2018

Melanie M. Hill, Executive Director
Tennessee Health Services and Development Agency
Andrew Jackson State Office Building, Suite, 850
500 Deaderick Street
Nashville, Tennessee 37243

RE: Eye Surgery Center of Lenoir City, LLC-ASTC

Dear Mrs. Hill:

This letter is to provide assurance that First-Citizens Bank & Trust Company is familiar with Eye Surgery Center of Lenoir City, LLC's project, which is seeking Certificate of Need ("CON") approval.

The Bank has already provided a \$150,000.00 line of credit at an interest rate of prime (currently 5.00%) to support the CON process and other organizational and start-up costs for the project.

First Citizens Bank has committed \$4,110,000.00 to DMT Properties, LLC for funding and permanent financing for this medical facility development at 5491 Creekwood Park Blvd. in Lenoir City, TN. The \$633,350.00 build-out cost (approximately 3,889 sq. ft.) for the surgery center is included in FCB's \$4,110,000.00 commitment to DMT Properties, LLC, the affiliated owners and landlord for the new medical clinic office and proposed eye surgery center (ASTC). FCB is providing 100% financing for the real estate build-out cost of \$633,350.00, the equipment cost of \$500,000.00, the existing line of credit for a total Bank commitment of approximately \$1,283,350.00 for the Eye Surgery Center of Lenoir City, LLC -ASTC.

We would expect to finance this type of project at an interest rate of approximately 3.99% for a term of 11 years (monthly payments based on a 20 year amortization) for the real estate portion—estimated to total \$4,110,000.00. We would expect to finance the equipment portion, estimated to total \$500,000.00, of the project for up to 7 years. Currently the fixed rate of interest on this equipment portion would be 4.35% with 84 monthly payments.

We look forward to helping with the financing of this project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Richardson'.

Ken Richardson
Senior Vice President
East Tennessee Manager Commercial Banking

Attachment Section B-Economic

Financial Statements

**EYE CARE CENTERS, PLLC dba
TENNESSE EYE CARE
Balance Sheet**

UNAUDITED

As of
April 30, 2018

Assets

Cash & Cash Equivalents

1st Citizens - General	\$ 57,173
1st Citizens - Merchant	108,373
US Bank - W-2 Payroll	2,942
US Bank - K1 - New Account	60
1st Bank - TN-Refunds	911
Total Cash & Cash Equivalents	\$ 169,459

Accounts Receivable

Insurance Receivable-Net of Adjustments	(124,524)
Total Accounts Receivable	\$ (124,524)

Physical Inventory

Retail - End of Year Inventory Count	240,729
Total Physical Inventory	\$ 240,729

Fixed Assets

Leasehold Improvements	417,262
Fixed Asset- Furniture, Fixtures & Equip	3,305,803
Accumulated Depreciation-Fixed Assets	(3,406,296)
Total Fixed Assets-Net	\$ 316,769

Intangible Assets

Goodwill	59,419
Total Intangible Assets	\$ 59,419

Total Assets

\$ 661,852

Liabilities

Accounts Payable

Accounts Payable	\$ 308
Total Accounts Payable	\$ 308

Other Payables

Equipment Purchases Payable	75,846
Total Other Payables	\$ 75,846

Long Term Liabilities

N/P - 1st Citizens 530k Lease Line	114,194
N/P - 1st Citizens Morristown Equip Lease	56,950
N/P - OCT System	35,705
N/P - Photocoagulator	21,067
TEC Knox Equipment Lanes	34,324
TEC Harriman Equipment Lanes	22,849
Total Long Term Liabilities	\$ 285,089

Total Liabilities

\$ 361,243

Shareholders' Equity

Partners' Equity	23,248
Retained Earnings	240,785
Current Income	116,576
Partner Draws	(80,000)
Total Shareholders' Equity	\$ 300,609

Total Liabilities & Shareholders' Equity

\$ 661,852

**EYE CARE CENTERS, PLLC dba
TENNESSE EYE CARE
Profit & Loss Statement**

UNAUDITED

YTD (4 mos)

April 30, 2018

Sales

Patient Service Fees	\$ 2,380,318
Optical	537,620
Contact Lens	191,753
Other Medical Supplies	45,981
Total Revenues	\$ 3,155,672

Cost of Goods Sold

Cost of Goods Sold-Frames, Lenses, Optical & Contact Lens	409,974
Total Cost of Goods Sold	\$ 409,974

Gross Profit **\$ 2,745,698**

Operating Expenses

Salaries and Wages	778,478
Physicians' Salaries and Wages	942,634
Employee Benefit Programs	119,370
Pension, profit-sharing, etc.plans	63,592
Supplies	144,204
Taxes	6,749
Rent	239,123
Repairs & Maintenance	61,679
Advertising & Promotion	2,003
Travel, Meals & Entertainment	23,179
Legal & Accounting	11,546
Professional Services	9,179
Computer Services	32,217
Insurance	32,840
Telephone & Utilities	39,777
Office Expenses	65,982
Dues & Subscriptions	18,890
General & Administrative Expenses-Other	33,705
Total Operating Expenses	\$ 2,625,147

Net Operating Income **\$ 120,551**

Depreciation & Amortization Expense	\$ -
Interest Expense	3,975
Total Depreciation & Interest Expense	\$ 3,975

Net Income **\$ 116,576**

Management Report

Eye Surgery Center of Lenoir City, LLC
For the period ended June 30, 2018

Prepared by

Carmen A. Bentley, CPA, CGMA

Prepared on

July 3, 2018

Table of Contents

Profit and Loss3

Balance Sheet.....4

Profit and Loss

January - June, 2018

	Total
INCOME	
Total Income	
GROSS PROFIT	0.00
EXPENSES	
General & Administrative Expenses	
5020 Bank Charges	82.50
5030 Interest Expense	2,509.58
5200 Accounting Services	11,025.00
5220 Consulting Fees	35,000.00
5300 Copying & Printing	127.65
5330 Office Supplies	13.06
5340 Licenses & Permits	300.95
5360 Postage & Delivery	48.54
5520 Taxes - State F&E	100.00
Total General & Administrative Expenses	49,207.28
Total Expenses	49,207.28
NET OPERATING INCOME	-49,207.28
NET INCOME	\$ -49,207.28

Balance Sheet

As of June 30, 2018

	Total
ASSETS	
Current Assets	
Bank Accounts	
1000 First Citizens Bank - Checking -1762	8,146.37
Total Bank Accounts	8,146.37
Total Current Assets	8,146.37
Other Assets	
1510 Start-up Costs	984.98
Total Other Assets	984.98
TOTAL ASSETS	\$9,131.35
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
2500 First Citizens Bank - LOC -1284	122,850.00
Total Other Current Liabilities	122,850.00
Total Current Liabilities	122,850.00
Total Liabilities	122,850.00
Equity	
3001 Partner's Equity - T Browning	-32,255.69
3002 Partner's Equity - M Lowrance	-32,255.68
3100 Retained Earnings	0.00
Net Income	-49,207.28
Total Equity	-113,718.65
TOTAL LIABILITIES AND EQUITY	\$9,131.35

**Attachment Section-Contribution to
Orderly Development-3A**

**Clinical Leadership & Human Resources
for Project**



LEGACY ANESTHESIA, LLC

12186 Paw Paw Plains Road, Lenoir City, TN 37771 | Phone (865) 803-3289

May 10, 2018

Eye Surgery Center of Lenoir City
c/o Stephen H. Rudolph
448 Cedar Bluff Road, PMB 255
Knoxville, TN 37923

Re: Intent to provide anesthesia for Ambulatory Surgical Treatment Center (ASTC)

Dear Sirs:

This letter is meant to serve as confirmation that I, Richard D. Deindoerfer, CRNA/A.P.N., dba Legacy Anesthesia, LLC, plan to provide anesthesia coverage for the ophthalmic ASTC in Lenoir City, Tennessee, subject to the contract negotiations after you have received approval of the Certificate of Need from the TN Health Services & Development Agency.

I have provided professional anesthesia care for over 30 years, performing my own billing for the last 20+ years, and have been contracted with Tennessee Medicare/Medicaid, BlueCross, TennCare, and all appropriate health insurance companies. I plan to utilize a professional anesthesia billing company for this endeavor with the Lenoir City ASTC.

I provided anesthesia services at Roane Medical Center, in Harriman, TN, for the last 30 years, during which time I have had the pleasure of providing ophthalmic anesthesia for both owner physicians/surgeons; Dr. Thomas Browning, since 1990, and Dr. Matthew Lowrance, since 2013, when he became an associate of Dr. Browning and his practice.

I would like to thank you for this exciting opportunity to be a part of this endeavor, and sincerely appreciate your trust and confidence in me, to provide your anesthesia services. If I can be of any assistance in facilitating or expediting this endeavor, please contact me at (865) 803-3289. I am looking forward to working with you and your patients soon.

Sincerely,

Richard D. Deindoerfer, CRNA/A.P.N.
12186 Paw Paw Plains Road
Lenoir City, TN 37771

Registered Nurse – TN License # RN 0000051726

Advanced Practice Registered Nurse – TN License # APN0000009103

American Association of Nurse Anesthetists - TN Member ID # 37393

Matthew D. Lowrance, DO

mlovrancedo@gmail.com

EDUCATION/WORK EXPERIENCE

Private Practice; Retina Specialist, Anterior Segment Surgeon (Current) Tennessee Eye Care	7/2013-Current
Founder and CEO; Tidal Key Group, LLC	6/2013-Current
Medical Director; Retinal Care, LLC	1/2015-Current
Fellowship; Medical Retina Bascom Palmer Eye Institute- University of Miami, Miller School of Medicine	7/2012-7/2013
Residency; Ophthalmology Michigan State University/Hillsdale Community Health Center	7/2009- 6/2012
Osteopathic Medicine Internship Michigan State University/Hillsdale Community Health Center	7/2008- 6/2009
Virginia College of Osteopathic Medicine, Blacksburg, Virginia Doctor of Osteopathic Medicine	7/2004- 6/2008
East Tennessee State University, Johnson City, Tennessee Post Baccalaureate Pre-Medicine Program	6/2002- 6/2003
North Georgia College and State University, Dahlonega, Georgia Bachelor of Arts, Music	8/1998- 12/2001

LICENSURE

State of Tennessee	State of Alabama	State of Oklahoma (Pending)
State of Florida	State of Kentucky (Pending)	

FACULTY APPOINTMENTS

University of Miami, Miller School of Medicine Clinical Instructor; Department of Ophthalmology	7/2012- 7/2013
Michigan State University College of Osteopathic and Human Medicine Clinical Instructor; Department of Neurology and Ophthalmology	7/2009- 7/2012

GRANT SUPPORT

National Institutes of Health R01: A disposable polymer composite sensor film for preventing postoperative blindness \$1.9 million	2015- pending
Hillsdale Community Health Center The Current Concepts Program. \$8,750.00	2009-2010
Hillsdale Community Health Center The Current Concepts Program. \$5,000.00	2010-2011

HONORS AND AWARDS

2011 Outstanding Resident of the Year Award Nominee
American Osteopathic Foundation

LEO Award: American Academy of Ophthalmology. 2010

Deans List: East Tennessee State University. 2003

Gloria Schott Scholarship; Given to the most accomplished music major
North Georgia College and State University 2001

Dismukes Distinguished Musician Award; Given to the most outstanding musician
North Georgia College and State University 2001

LEADERSHIP AND SERVICE

Council of Residents and Fellows of the American Osteopathic Colleges of Ophthalmology
Ophthalmology Chair. 2011-2012

Guest speaker and moderator of the ophthalmology breakout session of the annual medical student
symposium. Virginia College of Osteopathic Medicine. 2011.

Resident panel member 3 consecutive years for Hillsdale College Pre-Medicine information session
Hillsdale College. 2009-2011

Council of Residents and Fellows of the American Osteopathic Colleges of Ophthalmology
Ophthalmology Chair Elect. 2010-2011

Co-Founder of the "Eye Believe Project"
Outreach program collecting eyeglasses for clinics in Honduras. 2010

Created and instituted the "Current Concepts Program" pursuing and being awarded grant support for
this program two consecutive years. Hillsdale Community Health Center. 2009 and 2010

Instituted Microsurgical Skills Lab
Hillsdale Community Health Center. 2008

Composition; "Alma Mater"
Official alma mater for the Edward Via Virginia College of Osteopathic Medicine. 2006

PUBLICATIONS, PAPERS AND POSTERS

Doshi, R., Lowrance, M., Kim, B., Davis, J., Rosenfeld, P. Epiretinal Macular Edema Associated With
Thick Epiretinal Membranes. Ophthalmic Surgery, Lasers & Imaging Retina. September/October
2013 · Vol. 44, No. 5

Lowrance, M., Vision Loss in a 31 year old Female. Ophthalmology Times Grand Rounds series. May
2013. ASCRS issue.

Lowrance, M., Letter to the editor Ophthalmology Times in response to an article entitled, "FDA
Clears MGD Device." August 2011

Lowrance, M., Benjamin, E., Gossage, D. Congenital simple hamartoma of the retinal pigment epithelium and the use of optical coherence tomography in demystifying this rare entity. *Accepted to the Clinical & Surgical Journal of Ophthalmology. June 2011.*

Lowrance, M., Lowrance, C., Benjamin, E., Gossage, D. A quantitative measure of the effects of eyelid massage on the production of tears and a proposed osteopathic treatment technique for dry eyes. **1st Place.** *Poster presentation at the 95th Annual Clinical Assembly of the AOCOO-HNS, Tucson, Arizona. 2011.*

Benjamin, E., Lowrance, M., Chu, R., Warner, N., Gossage, D. Conjunctival Optical Coherence Tomography as a New Technique in Giant Papillary Conjunctivitis Assessment and Correlated Treatment Study (CONTACTS). **2nd Place.** *Poster presentation at the 95th Annual Clinical Assembly of the AOCOO-HNS, Tucson, Arizona. 2011. Accepted to the Clinical & Surgical Journal of Ophthalmology August 2011*

Lowrance, M., Benjamin, E., Warner, N., Gossage, D. Preliminary Report; The Incidence of Culture Positive Needle Tips Following Intravitreal Injections. *Poster presentation at the 95th Annual Clinical Assembly of the AOCOO-HNS, Tucson, Arizona. 2011.*

Ireland, K., Lowrance, M. Heidelberg Spectralis HRA + OCT Demonstrates Residual Damage from Quiescent Toxocara Canis. *Poster presentation at the 95th Annual Clinical Assembly of the AOCOO-HNS, Tucson, Arizona. 2011.*

Lowrance, M., Benjamin, E., Chu, R., Gossage, D. Chemotherapy Induced Diffuse Lamellar Keratitis Nine Years Post LASIK. *Research Paper. Accepted to Clinical & Surgical Journal of Ophthalmology September 2011*

Lowrance, M., The Science of Smoke. *Article. Published on www.smackers.com*

Lowrance, M., Benjamin, E., Gossage, D. Chemotherapy Induced Diffuse Lamellar Keratitis Nine Years Post LASIK. *Poster presented at the 94th Annual Clinical Assembly of the AOCOO-HNS, Orlando, Florida. 2010.*

Lowrance, M., Norris, L., Chu, R., Gossage, D. Lucentis for Occlusive Vascular Edema Intravitreal Treatment. *Poster presented at the 93rd Annual Clinical Assembly of the AOCOO-HNS, Austin, Texas. 2009.*

Chu, R., Lowrance, M., Gossage, D. Initial Prechop Or Divide-and-conquer Study. (IPOD Study) *Research Paper.*

Habryl, M., Lowrance, M., Benjamin, E., Chu, R., Gossage, D., Case Series of Anti-VEGF Use and Persistent IOP Rise. *Research Paper*

RESEARCH

Clinical Application of Spectral Domain Optical Coherence Tomography
Sub-Investigator

A Natural History Observation and Registry Study of Macular Telangiectasia Type 2. The Mactel Study.
Sub-Investigator

A phase 2, multi-centre, randomized, double-masked, placebo-controlled, parallel-group study to investigate the safety, tolerability, efficacy, pharmacokinetics and pharmacodynamics of GSK933776 in adult patients with geographic atrophy (GA). Sub-Investigator.

A Phase I/II, Open-Label, Multi-Center, Prospective Study to Determine the Safety and Tolerability of Sub-retinal Transplantation of Human Embryonic Stem Cell Derived Retinal Pigmented Epithelial (MA09-hRPE) Cells in Patients with Advanced Dry AMD. Sub-Investigator.

Home Vision Monitoring in AREDS2 for Progression to Neovascular AMD using the ForeseeHome Device. Sub-Investigator.

The Diamond-Dusted Membrane Scraper ("Tano Brush") in Macular Surgery. Sub-Investigator

A Phase 2b/3 Multicenter, Randomized, Double-Masked, Dose-Ranging Study Comparing the Efficacy and Safety of Emixustat Hydrochloride (ACU-4429) with Placebo for the Treatment of Geographic Atrophy Associated with Dry Age-Related Macular Degeneration. Sub-Investigator.

Age-Related Eye Disease Study2 (AREDS 2): A Multi-center, Randomized Trial of Lutein, Zeaxanthin, and Long-Chain Omega-3 Fatty Acids (Docosahexaenoic Acid [DHA] and Eicosapentaenoic Acid [EPA]) in Age-Related Macular Degeneration. Sub-Investigator.

Outcomes of Exudative Ocular Diseases With and Without Anti-VEGF Therapy. Sub-Investigator.

PRESENTATIONS AND LECTURES

Macular Degeneration. An Update and Overview on "Healthline" hosted by Shelia Wittke. Community Television of Knoxville. September 11, 2013.

"Jetrea" A New Treatment for Vitreomacular Adhesion on "Healthline" hosted by Shelia Wittke. Community Television of Knoxville. August 14, 2013.

The Most Common Causes of Vision Loss. CME Presentation at the Virginia Osteopathic Association Annual Meeting. October 19 2013. Hotel Roanoke, Roanoke, VA.

Nevus or Not? Presentation and review of tumors of the retinal pigment epithelium given at the 95th Annual Clinical Assembly of the AOCOO-HNS, Tucson, Arizona. 2011.

"White spots in my eyes." Is it a pattern dystrophy? Case presentation given at the Great Lakes Retina Study Group. September, 2010. Detroit, Michigan

Proliferative Diabetic Retinopathy; More Than VEGF. Lecture and case presentation given at the American Osteopathic Colleges of Ophthalmology Otolaryngology-Head and Neck Surgery Mid Year Meeting. August, 2010. Detroit, Michigan.

Chemotherapy Induced Diffuse Lamellar Keratitis Nine Years Post LASIK. Presentation given at the 94th Annual Clinical Assembly of the American Osteopathic Colleges of Ophthalmology Otolaryngology-Head and Neck Surgery. May, 2010. Orlando, Florida.

The Perplexing Pregnancy; A rare presentation of BRAO. Case presentation given at the American Osteopathic Colleges of Ophthalmology Otolaryngology-Head and Neck Surgery Mid Year Meeting. September, 2009. Detroit, Michigan.

CME Presentation: Mass Psychogenic Illness. A synopsis presented to Southwestern Virginia Mental Health Institute physician staff. 1 hour credit CME provided through the University of Virginia Department of Medical Education. February, 2007. Marion, Virginia.

Ocular Manifestations of Cardiovascular Disease. Overview presented to the Carilion New River Valley Medical Center. January, 2007. Christiansburg, Virginia.

PROFESSIONAL ORGANIZATIONS

American Academy of Ophthalmology (AAO)

Young Ophthalmologists Committee of the AAO (YO)
American Osteopathic Colleges of Ophthalmology, Otolaryngology – Head and Neck Surgery
Council of Residents and Fellows of the AOCCO-HNS (CRF)
Michigan Society of Eye Physicians and Surgeons (MISEPS)
American Osteopathic Association (AOA)
Michigan Osteopathic Association (MOA)
Virginia Osteopathic Medical Association (VOMA)
Memphis Barbecue Network (MBN)

PATENTS AND INNOVATIONS

Designed and developed a safer, more efficient ophthalmic surgical drape; Patent Pending.
Designed a device to monitor and prevent ocular injury in the operating room; Patent Pending.

PERSONAL INFORMATION

I am a classically trained musician, husband and father of three, southern BBQ connoisseur, college football and basketball fanatic and enjoy songwriting, composition and designing medical products.

Birth date: May 9, 1977
Birthplace: Huntsville, Alabama
Citizenship: United States of America

CURRICULUM VITAE

Name: Thomas Anthony Browning, M.D.
10205 Thimble Fields Drive
Knoxville, TN 37922
(865) 777-0343

Business Address: Eye Care Centers, PLLC
1798 Roane State Hwy
Harriman, TN 37748

Education:
Academic College: August 1977- May 1981, University of Tennessee,
Knoxville, TN
B. S., Mechanical Engineering
Medical School: August 1981- May 1985, University of Tennessee
College of Medicine
Memphis, TN – M. D.

Internship: August 1985-May 1986, Methodist Hospital,
Memphis, TN

Residency: August 1986-May 1989,
Residency in Ophthalmology
University of Tennessee Hospital
Memphis, TN

Fellowship: May 1989-May 1990, Vitreoretinal Foundation
Memphis, TN

Work History: May 1990-January 1994, Joined Dr. Paul Wittke,
Ophthalmic Associates
January 1994-Jan 2000, Board of Directors,
Eye Corp
February 1994-May 1998, Partner,
Vitreoretinal Foundation
August 1996-May 1998, Participated in Retina
Fellowship Program and Medical Director,
Optometric Residency Program
May 1998-present, Joined Eye Care Centers, PLLC
January 1999-present, Partner, Eye Care
Centers, PLLC

Licensure: May 1986, Tennessee

Board Certification:

May 1986, National Board of Medical
Examiners

May 1992, American Board of Ophthalmology

Memberships:

Tennessee Academy of Ophthalmology
American Academy of Ophthalmology

Practitioner Profile Data

Practitioner Profile Data

This information is provided by the licensee as required by law

Print Date: 11/9/2016

While searching for information on a particular health care professional, consumers should be aware that there are several locations available to aid them with their research. ([Licensure Verification](#), [Abuse Registry](#), [Monthly Disciplinary Actions](#), and [Recently Suspended Licenses For Failure to Pay Child Support](#)) Links to various Internet sites are available from the Department of Health Website [home page](#) and from the [Health Related Boards Website](#).

BROWNING, THOMAS A

PRACTICE ADDRESS:

THOMAS A BROWNING MD
1798 ROANE STATE HWY
Hartman, TN 37748

LANGUAGES: (Other than English)

None Reported

SUPERVISING PHYSICIAN:

None Reported

GRADUATE/POSTGRADUATE MEDICAL/PROFESSIONAL EDUCATION AND TRAINING

PROGRAM/ INSTITUTION	CITY STATE/ COUNTRY	DATE OF GRADUATION	TYPE OF DEGREE
UNIV OF TN MEMPHIS	MEMPHIS, TN	01/01/1985	MD

OTHER EDUCATION AND TRAINING

PROGRAM/ INSTITUTION	CITY STATE/ COUNTRY	FROM	TO
METH HOSP	MEMPHIS TN	01/01/1985	01/01/1986
VITREORETINAL FOUNDATION	MEMPHIS TN	01/01/1989	01/01/1989

UNIV OF TN HOSP

MEMPHIS TN

01/01/1986

01/01/1989

SPECIALTY BOARD CERTIFICATIONS

**CERTIFYING BODY/
BOARD/
INSTITUTION**

**CERTIFICATION/
SPECIALTY/
SUBSPECIALTY**

AMER BD OF OPHTHAL

?

FACULTY APPOINTMENTS**TITLE****INSTITUTION****CITY/STATE**

None Reported

None Reported

None Reported

STAFF PRIVILEGES

This practitioner currently holds staff privileges at the following hospitals

HOSPITAL**CITY/STATE**

ROANE MEDICAL CENTER

HARRIMAN TN

This practitioner currently participates in the following *TennCare* plans

BLUE CARE

PHP

FINAL DISCIPLINARY ACTION**ACTIONS BY STATE REGULATORY BOARD****AGENCY****VIOLATION****ACTION**

TN BOARD OF MEDICAL
EXAMINERS

FAILED TO MAINTAIN SUFFICIENT CONTINUING
ED CREDITS

CIVIL PENALTIES, PROVIDE PROOF
OF CEUS

RESIGNATIONS IN LIEU OF TERMINATION**HOSPITAL****ACTION**

None Reported

None Reported

ACTIONS BY HOSPITAL**HOSPITAL****VIOLATION****ACTION**

None Reported

None Reported

None Reported

CRIMINAL OFFENSES**OFFENSE****JURISDICTION**

None Reported

None Reported

LIABILITY CLAIMS

Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the Legislature believes that consumers should have access to malpractice information. In these profiles, the Department has given you information about both the malpractice history of the physician's specialty and the physician's history of payments. The Legislature has placed payment amounts into three statistical categories: below average, average, and above average. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

- Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make individual doctor's history more meaningful.
- The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to move through the legal system.
- Some doctors work primarily with high risk patients. These doctors may have malpractice histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.
- Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the provider. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information provided in this report, and malpractice generally, with your doctor. The Department can refer you to other articles on this subject.

11/9/2016

Tennessee Department of Health: Licensure/Registration

The Health Department started getting reports for claims paid after May, 1998.

Settlements valued below \$75,000
are not included here.

DATE

Settlement amount was:

None Reported

None Reported

OPTIONAL INFORMATION

COMMUNITY SERVICE / AWARD / HONOR

DESCRIPTION

ORGANIZATION

None Reported

None Reported

PUBLICATIONS

TITLE

PUBLICATION

DATE

None Reported

None Reported

None Reported

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Licensure Verification

Search Results

An official copy of this document is available, with applicable fees, from the Office of Investigations. For more information, please contact the Tennessee Department of Health, Office of Investigations, 665 Mainstream Drive, 2nd Floor, Nashville, Tennessee 37243, or 615-532-3426.

The following disciplinary information exists for the professional selected:

Name:

Browning, Thomas

Profession:

Medical Doctor

Lic #:

17111

ACTION	REASON	EFFECTIVE DATE
Assessed \$480 in civil penalties; must provide proof of 12 hours of continuing education within 180 days; and must complete an additional 10 hours of continuing education hours within 2 years.	Failed to properly maintain sufficient continuing education credits	1/27/2009 View Board Order

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STATE OF TENNESSEE
DEPARTMENT OF HEALTH
Bureau of Health Licensure and Regulation
Division of Health Related Boards
227 French Landing, Suite 300
Heritage Place
Nashville, TN 37243

PHIL BREDESEN
GOVERNOR

SUSAN R. COOPER, MSN, RN.
COMMISSIONER

Board of Medical Examiners

November 26, 2008

AGREED CITATION
THOMAS A. BROWNING, M.D.
LICENSE #17111

WHEREAS, Respondent is licensed as a medical doctor in the State of Tennessee by the Tennessee Board of Medical Examiners, license number 17111; and

WHEREAS, Respondent has failed to properly maintain sufficient continuing education credits in violation of Tenn. Code Ann. §§ 63-6-233 and 63-6-214(b)(3); and

WHEREAS, Respondent admits that this violation occurred and does not wish for this matter to be further prosecuted by the State of Tennessee; and

WHEREAS, Respondent acknowledges that Respondent is aware that he or she has a right to a hearing before the Tennessee Board of Medical Examiners. At such hearing, Respondent acknowledges that he or she is aware that he or she may be represented by counsel if he or she so chooses. Moreover, Respondent acknowledges and is fully aware that no civil penalty may be assessed against him or her and no formal action may be taken against his or her license without being provided the opportunity for a hearing before the Tennessee Board of Medical Examiners. Respondent acknowledges and understands that by signing this Agreed Citation and paying a civil penalty of four hundred eighty dollars (\$480), representing a penalty of forty dollars (\$40.00) per delinquent credit hour, and providing proof of completion of the required number of continuing education credits, the Respondent waives his or her right to a hearing as described herein and provided for in the Administrative Procedures Act found at Tenn. Code Ann. § 4-5-301 et seq.; and

WHEREAS, Respondent admits to the failure to obtain twelve (12) hours of required continuing education credits; and

WHEREAS, Respondent acknowledges and understands that if the Respondent does not

sign this citation and return it along with a check or money order made out to the State of Tennessee for the prescribed amount within thirty (30) days, then a formal contested case proceedings could be initiated in which the Tennessee Board of Medical Examiners is authorized to assess civil penalties of up to one thousand dollars (\$1,000.00) for each violation of applicable law and the Board could refuse to renew the Respondent's license or the Respondent's license could be suspended or revoked.

THEREFORE, Respondent, by signing below agrees to the terms of this citation and remits a civil penalty in the amount **four hundred eighty dollars (\$480)**. The Respondent further agrees to provide proof to the Board of completion of **twelve (12) hours** of continuing education, the amount determined to be deficient within **one hundred and eighty (180) days** of ratification of this citation by the Board. Additionally, Respondent agrees to complete an additional **ten (10) hours** continuing education hours within **two (2) years** of ratification of this Agreed Citation. Furthermore, Respondent executes this citation for the sole purpose of avoiding further administrative proceedings with respect to this violation. Respondent hereby expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this citation. Respondent acknowledges that this citation is subject to Board approval and agrees that consideration of this citation shall not prejudice the Board in any future proceeding should the Board not approve this citation. Respondent further acknowledges and understands that this citation will be reported on the Department of Health's Disciplinary Action Report and appear on the Department of Health's Website.

AGREED BY:

Thomas A. Browning, M.D.
Respondent (License #17111)

Date

Mitchell L. Mutter, M.D., President
Tennessee Board of Medical Examiners

Date

Matthew J. Scanlan, Esq., Deputy General Counsel
Tennessee Department of Health

Date

STEPHEN H. RUDOLPH, CPA
CHIEF MANAGER & CONSULTANT
EYECARE RESOURCES, LLC

- OVER THIRTY YEARS EXPERIENCE IN MANAGING OPHTHALMIC & OPTOMETRIC MEDICAL PRACTICES INCLUDING FINANCIAL OPERATIONS, CLINICAL OPERATIONS, REAL ESTATE, MEDICAL FACILITIES, ACQUISITION/DEVELOPMENT, NETWORKING & STRATEGIC PLANNING
- SERVED AS CEO & ADMINISTRATOR OF VITREORETINAL FOUNDATION-MEMPHIS, TN (CATASTROPHIC EYE CARE PRACTICE WITH THIRTY-SIX OUTREACH LOCATIONS) & DEVELOPED ONE OF THE FIRST FREE-STANDING ASC FACILITIES TO PERFORM VITREORETINAL SURGERY (1985-1994)
- SERVED AS CEO OF REGIONAL PRACTICE MANAGEMENT COMPANY-EYECORP, INC, A PROVIDER-OWNED NETWORK OF PRACTICES WHICH ESTABLISHED A VERTICALLY INTEGRATED EYE CARE DELIVERY SYSTEM IN THE SOUTHEAST (1994-1996). EYECORP MERGED WITH PRG IN 1996 & OPERATED THROUGH 2000.
- ASC TURN-KEY DEVELOPMENT EXPERIENCE HAS BEEN FOCUSED ON SINGLE SPECIALTY OPHTHALMIC FACILITIES IN TN, MS, AL, IN, GA (1988-PRESENT)



State of Tennessee

Health Services and Development Agency

Andrew Jackson, 9th Floor, 502 Deaderick Street, Nashville, TN 37243

www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

August 1, 2018

Stephen H. Rudolph
Eyecare Resources, LLC
448 N. Cedar Bluff Rd Suite 255
Knoxville, TN 37923

RE: **Certificate of Need Application – Eye Surgery Center of Lenoir City- CN1807-033**

The establishment of a single specialty ophthalmic ASTC providing eye and related laser procedures in two operating rooms. The ASTC will be located at 5491 Creekwood Park Boulevard, Lenoir City (Loudon County), TN. Eye City Surgery Center of Lenoir City, LLC will be owned by its physician members. The estimated project cost is \$2,183,350.

Dear Mr. Rudolph:

This is to acknowledge the receipt of supplemental information to your application for a Certificate of Need. Please be advised that your application is now considered to be complete by this office.

Your application is being forwarded to Trent Sansing at the Tennessee Department of Health, Division of Policy, Planning, and Assessment for Certificate of Need review. You may be contacted by Mr. Sansing or someone from his office for additional clarification while the application is under review by the Department. Mr. Sansing's contact information is Trent.Sansing@tn.gov or 615-253-4702.

In accordance with Tennessee Code Annotated, §68-11-1607, et seq., as amended by Public Chapter 780, the 60-day review cycle for this project began on August 1, 2018. The first 60 days of the cycle are assigned to the Department of Health, during which time a public hearing may be held on your application. You will be contacted by a representative from this Agency to establish the date, time and place of the hearing should one be requested. At the end of the 60-day period, a written report from the Department of Health or its representative will be forwarded to this office for Agency review. You will receive a copy of their findings. The Health Services and Development Agency will review your application on October 24, 2018.

Mr. Rudolph
Page 2

Any communication regarding projects under consideration by the Health Services and Development Agency shall be in accordance with T.C.A. § 68-11-1607(d):

- No communications are permitted with the members of the agency once the Letter of Intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the Executive Director and a written summary of such communication shall be made part of the certificate of need file.
- All communications between the contact person or legal counsel for the applicant and the Executive Director or agency staff after an application is deemed complete and placed in the review cycle are prohibited unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the Executive Director or agency staff are not prohibited.

Should you have questions or require additional information, please contact me.

Sincerely,



Melanie M. Hill
Executive Director

cc: Trent Sansing, TDH/Health Statistics, PPA



State of Tennessee

Health Services and Development Agency

Andrew Jackson, 9th Floor, 502 Deaderick Street, Nashville, TN 37243

www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

MEMORANDUM

TO: Trent Sansing, CON Director
Office of Policy, Planning and Assessment
Division of Health Statistics
Andrew Johnson Tower, 2nd Floor
710 James Robertson Parkway
Nashville, Tennessee 37243

FROM: Melanie M. Hill
Executive Director

DATE: August 1, 2018

RE: Certificate of Need Application
Eye Surgery Center of Lenoir City- CN1807-033

Please find enclosed an application for a Certificate of Need for the above-referenced project.

This application has undergone initial review by this office and has been deemed complete. It is being forwarded to your agency for a sixty (60) day review period to begin on August 1, 2018 and end on October 1, 2018.

Should there be any questions regarding this application or the review cycle, please contact this office.

Enclosure

cc: Stephen H. Rudolph

JUL 10 10:41:45



**State of Tennessee
Health Services and Development Agency**

Andrew Jackson Building, 9th Floor

502 Deaderick Street

Nashville, TN 37243

www.tn.gov/hsda

Phone: 615-741-2364

Fax: 615-741-9884

LETTER OF INTENT

The Publication of Intent is to be published in the **Knoxville News-Sentinel** which is a newspaper
(Name of Newspaper)

of general circulation in **Loudon County, Tennessee**, on or before
(County)

July 10th, 2018,
(Month / day) (Year)

for one day.

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with T.C.A. § 68-11-1601 *et seq.*, and the Rules of the Health Services and Development Agency, that:

Eye Surgery Center of Lenoir City,

(Name of Applicant)

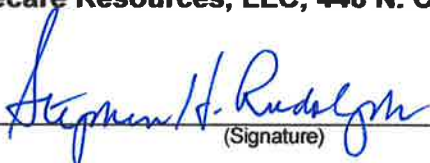
a proposed ambulatory surgical treatment center to be

(Facility Type-Existing)

owned and managed by **Eye Surgery Center of Lenoir City, LLC (a Limited Liability Company)** intends to file an application for a Certificate of Need for the establishment of a single specialty ophthalmic ambulatory surgery center at a site adjacent to the owner's office and medical clinic located at **5491 Creekwood Park Blvd in Lenoir City, Loudon County, TN, 37772**. The estimated cost for the project is approximately **\$2,183,350.00** and the facility will seek licensure as an ambulatory surgical treatment center limited to ophthalmology, providing eye and related laser procedures. The facility will have two (2) operating rooms. The project does not contain major medical equipment, initiate or discontinue any other health service, and will not affect any licensed bed complements.

The anticipated date of filing the application is **July 13, 2018**.

The contact person for this project is **Stephen H. Rudolph, CPA** who may be reached at **Eyecare Resources, LLC, 448 N. Cedar Bluff Rd-Ste 255, Knoxville, TN 37923-3612; 901-219-0173**.


(Signature)

7/9/18
(Date)

shrudolphsr@yahoo.com
(E-mail Address)

The Letter of Intent must be filed in triplicate and received between the first and the tenth day of the month. If the last day for filing is a Saturday, Sunday or State Holiday, filing must occur on the preceding business day. File this form at the following address:

**Health Services and Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, Tennessee 37243**

The published Letter of Intent must contain the following statement pursuant to T.C.A. § 68-11-1607(c)(1). (A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.

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**State of Tennessee
Health Services and Development Agency**

Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, TN 37243

www.tn.gov/hsda

Phone: 615-741-2364

Fax: 615-741-9884

AD to be published on Tuesday- July 10th, 2018 in Knoxville News Sentinel

PUBLICATION OF INTENT

The following shall be published in the "Legal Notices" section of the newspaper in a space no smaller than two (2) columns by two (2) inches.

NOTIFICATION OF INTENT TO APPLY FOR A CERTIFICATE OF NEED

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with T.C.A. § 68-11-1601 *et seq.*, and the Rules of the Health Services and Development Agency, that **Eye Surgery Center of Lenoir City, a proposed ambulatory surgical treatment center to be owned and managed by Eye Surgery Center of Lenoir City, LLC (a Limited Liability Company) intends to file an application for a Certificate of Need for the establishment of a single specialty ophthalmic ambulatory surgery center at a site adjacent to the owner's office and medical clinic located at 5491 Creekwood Park Blvd. in Lenoir City, Loudon County, TN, 37772. The estimated cost for the project is approximately \$2,183,350.00 and the facility will seek licensure as an ambulatory surgical treatment center limited to ophthalmology, providing eye and related laser procedures. The facility will have two (2) operating rooms. The project does not contain major medical equipment, initiate or discontinue any other health service, and will not affect any licensed bed complements.**

The anticipated date of filing the application is **July 13, 2018.**

The contact person for this project is **Stephen H. Rudolph, CPA** who may be reached at **Eyecare Resources, LLC, 448 N. Cedar Bluff Rd-Ste 255, Knoxville, TN 37923-3612; 901-219-0173.**

Upon written request by interested parties, a local Fact-Finding public hearing shall be conducted. Written requests for hearing should be sent to:

**Health Services and Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, Tennessee 37243**

The published Letter of Intent must contain the following statement pursuant to T.C.A. § 68-11-1607(c)(1). (A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.

Supplemental #1 (Original)

Eye Surgery Center
of Lenoir City

CN1807-033

July 24, 2018

4:16 P.M.

July 23, 2018

Mark A. Farber-Deputy Director
State of Tennessee
Health Services and Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, TN 37243
www.tn.gov/hsda Phone: 615-741-2364/Fax: 615-741-9884

RE: Certificate of Need Application CN1807-033
Eye Surgery Center of Lenoir City
Supplemental Information & Affidavit

Dear Mr. Farber:

Pursuant to your letter of July 19, 2018, please find our response to the list of questions and request for supplemental information (with Affidavit) with regard to the CON application referenced above. Should you have any questions or require additional information please do not hesitate to contact me.

Kindest regards,



Stephen H. Rudolph, CPA-Consultant for

Eye Surgery Center of Lenoir City

PH# 901-219-0173

Email: shrudolphsr@yahoo.com

SUPPLEMENTAL

Eye Surgery Center of Lenoir City

**SUPPLEMENTAL INFORMATION &
RESPONSE**

July 24, 2018

4:16 P.M.



State of Tennessee

Health Services and Development Agency

Andrew Jackson Building, 9th Floor

www.tn.gov/hsda Phone: 615-741-2364/Fax: 615-741-9884

July 24, 2018

Stephen H. Rudolph, CPA
Eyecare Resources, LLC
448 N. Cedar Bluff Road, Suite 255
Knoxville, TN 37923-3612

RE: Certificate of Need Application CN1807-033
Eye Surgery Center of Lenoir City

Dear Mr. Rudolph:

This will acknowledge our July 13, 2018 receipt of your application for a Certificate of Need for the establishment of a single specialty ambulatory surgical treatment center (ASTC) with two operating rooms to be located at 5491 Creekwood Park Boulevard Lenoir City (Loudon County), TN. The ASTC will be limited to ophthalmology.

Several items were found which need clarification or additional discussion. Please review the list of questions below and address them as indicated. The questions have been keyed to the application form for your convenience. I should emphasize that an application cannot be deemed complete and the review cycle begun until all questions have been answered and furnished to this office.

Please submit responses in triplicate by 4:00 p.m., Thursday, July 26, 2018. If the supplemental information requested in this letter is not submitted by or before this time, then consideration of this application may be delayed into a later review cycle.

1. Application Form

Please resubmit the original application in a manner that is consistent with the Numbering and Lettering with the Application Form found on the Agency's website.

RESPONSE: *Original Application Form is resubmitted consistent with Agency's website Application Form with respect to Numbering and Lettering. Revised Appendix & Attachment Cover Sheets have been resubmitted as well.*

2. Section A, Executive Summary A. Overview

The applicant has noted that the cases performed do not require general anesthesia. Do the surgeries being performed require a sterile environment? If not, could these cases be performed in a procedure room?

RESPONSE: *The ophthalmic surgical cases do require a sterile environment and are performed in an operating room even though general anesthesia will not be utilized. The laser eye procedure cases typically do not require anesthesia and can be performed in a sub-sterile environment but will also be performed in the operating rooms. This will be the most cost effective method in that a separate procedure room will not be required and these laser procedures can be scheduled to maximize efficiency with respect to staffing, physicians, and patient care. The ophthalmic surgical cases are projected to be approximately 80% of the caseload to be performed in the operating rooms (20% laser eye procedure cases).*

Will the potential offer of ownership interest and/or surgical privileges in the proposed project only be extended to affiliated physicians identified in this application and CN1611-038, Eye Surgery Center of Knoxville? Is it possible that ophthalmologists outside this group will be offered an ownership interest and/or surgical privileges?

RESPONSE: *The Applicant intends to operate the ASTC primarily as a practice-based facility for Drs. Browning & Lowrance and intend to recruit additional physicians through TEC as the practice and surgical volume growth occurs in the service area. Applicant will consider extending privileges and ownership to the affiliated physicians of Eye Surgery Center of Knoxville although the practice base of most of these physicians is Knoxville-based and may be better served at the ASTC in Powell, TN. For purposes of this application the Applicant has included information for Drs. Browning & Lowrance.*

3. Section A, Executive Summary B. 1) Need.

What is the source for the information that the ophthalmologist growth rate is flat and prevalence information pertaining to cataracts?

RESPONSE: *Sources include- Website for Prevent Blindness at preventblindness.org/cataract, Current Opinion in Ophthalmology-2015:26(1):61-65 Mark S. Hansen; David R. Hardten Article-Financially Efficient Cataract Surgery in Today's Healthcare Environment, Review of Ophthalmology-May 2016 Cover Story: The Aging Patient Christopher Kent, Senior Editor, Ophthalmology Management-Jan 1, 2015: Analyzing ophthalmology's manpower issue. How the profession can meet patient demand despite potential shortages by Zack Tertel, Senior Associate Editor*

In CN1611-038, Eye Surgery Center of Knoxville it was noted that Drs. Browning and Lowrance each had a 16.67% ownership interest in that ASTC. Will these

physicians be performing surgeries at this facility? If yes, how many days/week, total surgeries annually, and patient origin of patients receiving surgery there?

RESPONSE: *Drs. Lowrance & Browning have recently started performing surgeries at the Eye Surgery Center of Knoxville in Powell, TN and each will be performing surgeries at this facility one half-day to one full day/week. Estimated surgical cases based on 2017-821 cases from Knoxville based TEC practice location. Patient origin is primarily from its Knoxville based TEC practice location.*

In addition to the facilities already mentioned in the application, where else have Drs. Lowrance and Browning been performing surgeries and will they continue to perform surgeries at these locations after the proposed project is completed? If yes, please identify those locations and identify the number of surgeries performed at these location for the most recent year available.

RESPONSE: *Drs. Lowrance & Browning also perform surgeries at Lakeway Regional Hospital in Morristown, TN-545 cases for 2017 and Dr. Lowrance performed 43 cases in Newport Medical Center in Newport, TN for 2017. Drs. Browning and Lowrance will continue to perform these surgeries at these locations after the proposed project is completed.*

The applicant has stated that none of the existing ASTCs or hospitals in the service area can address the total comprehensive eye care of patients and ophthalmic surgeons in the TEC group. Is there capacity available at ASTCs and hospitals in Knox and Anderson Counties? If yes, please discuss whether or not this is a viable alternative.

RESPONSE: *The ASTCS and hospitals in Knox and Anderson counties are not a viable alternative since the patients the Applicant is serving originate in Loudon & Roane counties and to a lesser extent McMinn county. The existing ASTCs in Knox & Anderson County that provide eye surgery services are highly utilized and have limited if any capacity.*

4. Section A. Project Details 6. Legal Interest in Site

The response to this item is noted. Please provide a revised fully executed Option to Lease that at least includes the expected term of the lease and the anticipated lease payments.

RESPONSE: *The Summary Section of the Lease Agreement was inadvertently omitted from the original Option to Lease Agreement and Lease Agreement Attachment. Please find this Summary Section of the Lease Agreement which should accompany the previous information included in Attachment A-6A Option to Lease.*

5. Section A, Project Details, Item 12 Square Footage and Cost Per Square Footage Chart

Will the building uses only include space for TEC's practice offices and the ASTC? If not what other entities will be in the building?

RESPONSE: *Yes. The building uses will only include space for TEC's practice offices and the ASTC.*

What is the distance between the proposed ASTC and the hospitals located in Knox, Anderson, Roane, and Loudon Counties?

RESPONSE: *Please see information set forth in table on page 12. The hospitals located in Anderson and Knox are not impacted and not considered relevant for this ASTC's service area.*

Will the building space be designed for possible future expansion?

RESPONSE: *The building space has been designed for efficiency and to accommodate anticipated growth from both the TEC medical office space and ASTC planning perspectives. The ASTC floor plan has a designated "Patio Area" which could provide additional space (if needed) for the ASTC in the future.*

6. Section B, Need, A. (Specific Criteria -ASTC) Item 1.

Is the 34%-37% of capacity based on three days per week rather than 5? If yes, it appears that not more than 1 OR is needed for Years 1 and 2. When does the applicant expect that the Two ORs will be operational 5 days/week? Would 1 OR be sufficient to meet patient demand?

RESPONSE: *Two Operating Rooms provide the most efficient environment for cataract surgery and the two ORs can accommodate the laser eye procedures without requiring an additional procedure room*

Did the applicant consider the alternative of including a procedure room for laser procedures? Do laser procedures require a sterile environment?

RESPONSE: *The Applicant determined that the Two ORs were more cost effective than having a separate procedure room. Laser procedures can be scheduled at the end of the day in the OR even though they do not require a sterile environment without disrupting ophthalmic surgical caseloads scheduled for the ORs that do require a sterile environment.*

Mr. Stephen H. Rudolph

July 24, 2018

Page 5

7. Section B, Need, A. (Specific Criteria –ASTC) Item 5.

Please complete the following table for Year 2 of the proposed project:

RESPONSE: *See below.*

Operating Rooms	# cases	# cases/ Room	Minutes Used	Average Turnaround Time	Schedulable minutes*	% of Schedulable Time Used
Operating Room #1	1,083	1,083	50,716	46.83	135,000	37.57%
Operating Room #2	1,082	1,082	50,699	46.86	135,000	37.55%
Total Surgical Suite-2 ORS	2,165	1,083	101,385	46.83	270,000	37.55%

* defined as the summation of the minutes by each room available for scheduled cases
 Example: 7:30 AM to 4:30 PM, 5 days per week, 50 weeks/ year, equates to 9 hrs/day X 60 min/hr = 540 minutes/day X 5 days/week = 2,700 minutes / week X 50 weeks/year=135,000 schedulable minutes/room X the number of rooms=surgical suite schedulable capacity

Please complete the following charts for the Surgery Center of Athens and any other ASTC in Anderson or Knox County that could eventually be impacted by the proposed project in Year 1, 2, and future years.

RESPONSE: *See below. The Surgery Center of Athens in McMinn County is the only ASTC that will be impacted in Year 1, 2, and future years and it is not in the primary service area- (Loudon & Roane counties). Dr. Lowrance has performed eye surgeries at this Multi-specialty ASTC facility on a limited basis and the impact of these cases on the capacity of this ASTC is not significant. Anderson & Knox County ASTCs will not be impacted since the origin of these patients reside in the primary service area and have been and will continue to be referred for surgery from the TEC practice locations in Harriman (Roane County) & Lenoir City (Loudon County). Historically, Drs. Browning & Lowrance have performed these cases in the two hospitals located in Harriman (Roane County) & Lenoir City (Loudon County).*

015-2017 Service Area Utilization Trend

County	ASTC	2015 TEC Cases	2015 Ophth. Cases	2015 Total Cases	2015 Ophth. as a %Total	2016 TEC Cases	2016 Ophth. Cases	2016 Total Cases	2016 Ophth. as a %Total	2017 TEC Cases	2017 Ophth. Cases	2017 Total Cases	2017 Ophth. as a %Total	Ophth. Cases '15-'17 % change	Total Cases '15-'17 % change
McMinn	The Surgery Center of Athens	123	1,175	2,472	47.53%	138	1,310	2,426	54.00%	164	1,199	2,311	51.88%	2.04%	(6.51%)
	Grand Total/Average	123	1,175	2,472	47.53%	138	1,310	2,426	54.00%	164	1,199	2,311	51.88%	2.04%	(6.51%)

*Ophth. =Ophthalmic Surgery
Source: ASTC JAR*

2017 Service Area ASTC Utilization

County	ASTC	# ORs	# OR Cases	# Cases per OR	% of meeting 884 Minimum	# PRs	# PR Cases	# Cases per PR	% of Meeting 1,867 Minimum
McMinn	The Surgery Center of Athens	2	2,311	1,156	130.77%	1	0	0	0.00%
	Grand Total/Average	2	2,311	1,156	130.77%	1	0	0	0.00%

Source: ASTC JAR

Please provide the following information for hospitals in Loudon and Roane Counties and any hospitals in Anderson and/or Knox County that could be eventually impacted by the proposed project that provided ophthalmology surgery in 2016.

RESPONSE: *See below.*

County	Hospital	TEC Cases-FY 2016	Outpatient Ophth. Surgery Cases	Total Outpatient Cases	Ophth. Surgery as a % of Total
Loudon	Ft. Loudoun Medical Center	691	N/A	17,015	4.06%
Roane	Roane Medical Center	555	N/A	17,343	3.20%

Source: 2016 Hospital JAR

Please provide the following information for the applicant facility

RESPONSE: *See Below*

Applicant Projected Utilization

Year	# ORs	# OR Cases	# Cases per OR
1	2	1,968	984
2	2	2,165	1,083

8. Section B, Need. Item D. (Demographics)

The population data provided does not match with the May 2018 revised population data on the Department of Health's website.

Please update the population data and submit a replacement page.

RESPONSE: *Population Data schedule updated on replacement page 32R submitted along with replacement pages 6R, 25R, 26R, & 31R which were affected by revised demographic information.*

9. Section B. Economic Feasibility Item A. Project Cost Chart

Will the applicant be responsible for both lease costs and construction costs to complete the shelled-in space?

RESPONSE: *The applicant will be responsible for lease expense and the terms set forth in the Summary Section of the Lease Agreement once the Option Agreement is exercised upon CON approval by TN-HSDA and the lease agreement is executed. The Summary Section provides for the landlord to provide for the buildout construction cost of the ASTC space.*

10. Section B. Economic Feasibility Item B. Funding Sources

It appears that the build-out cost and equipment costs will be covered in the loan from First Citizens Bank.

How will the architectural and engineering fees; legal, administrative, and consultant fees; and lease expenses be covered?

RESPONSE: *First Citizens Bank has provided a line of credit in the amount of \$150,000.00 to fund the architectural and engineering fees, legal, administrative and consultant fees. Lease expenses will be paid from operations and leasehold improvements will be paid by landlord (through First Citizens Bank construction loan).*

11. Section B. Economic Feasibility Item C. Historical Data Chart

Please explain why the Annual Principal Debt Repayment in 2016 is significantly higher than in Years 2015 and 2017.

RESPONSE: *The TEC PLLC decided to accelerate the reduction of outstanding debt in 2016 from available cash flow from operations vs. cash distributions to its members.*

12. Section B. Economic Feasibility Item E. 1)

It appears that there are some slight calculation errors in this chart.

Please make the necessary corrections and submit a replacement page.

RESPONSE: *Noted. Replacement page 44R submitted.*

13. Section B. Economic Feasibility Item E. 1)

Utilizing JAR data please compare the charges of the proposed project to charges of single specialty ophthalmology ASTCs in Knox and Anderson Counties.

RESPONSE: *See table on replacement page 45R.*

14. Section B. Economic Feasibility Item F. 1)

Please provide audited financial statements, if available, for the applicant's owner.

RESPONSE: *Audited financial statements are not available for the Applicant's owner.*

15. Section B. Economic Feasibility Item F. 3)

Please provide the capitalization ratio for Tennessee Eye Care.

RESPONSE: *Capitization ratio= Long Term Debt/Total Equity(Net Assets)x 100. As of 4/30/2018 TEC = **94.84** (\$285,089/\$300,609) x 100*

16. Section B. Quality Measures

Please verify and acknowledge the applicant will be evaluated annually on whether the proposal will provide health care that meets appropriate quality standards upon the following factors:

- (a) Whether the applicant commits to maintaining an actual payor mix that is comparable to the payor mix projected in its CON application, particularly as it relates to Medicare, TennCare/Medicaid, Charity Care, and the Medically Indigent;
 - (b) Whether the applicant commits to maintaining staffing comparable to the staffing chart presented in its CON application;
 - (c) Whether the applicant will obtain and maintain all applicable state licenses in good standing;
 - (d) Whether the applicant will obtain and maintain TennCare and Medicare certification(s), if participation in such programs was indicated in the application;
 - (e) Whether an existing healthcare institution applying for a CON has maintained substantial compliance with applicable federal and state regulation for the three years prior to the CON application. In the event of non-compliance, the nature of non-compliance and corrective action shall be considered;
 - (f) Whether an existing health care institution applying for a CON has been decertified within the prior three years. This provision shall not apply if a new, unrelated owner applies for a CON related to a previously decertified facility;
 - (g) Whether the applicant will participate, within 2 years of implementation of the project, in self-assessment and external peer assessment processes used by health care organizations to accurately assess their level of performance in relation to established standards and to implement ways to continuously improve.
 - (h) Whether the applicant will participate, within 2 years of implementation of the project, in self-assessment and external peer assessment processes used by health care organizations to accurately assess their level of performance in relation to established standards and to implement ways to continuously improve.
1. This may include accreditation by any organization approved by Centers for Medicare and Medicaid Services (CMS) and other nationally recognized programs. The Joint Commission or its successor, for example, would be acceptable if applicable. Other acceptable accrediting organizations may include, but are not limited to, the following:
- (ii) Accreditation Association for Ambulatory Health Care, and where applicable, American Association for Accreditation of Ambulatory Surgical Facilities, for

Ambulatory Surgical Treatment Center projects.

For Ambulatory Surgical Treatment Center projects, whether the applicant has estimated the number of physicians by specialty expected to utilize the facility, developed criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel, and documented the availability of appropriate and qualified staff that will provide ancillary support services, whether on- or off-site.

RESPONSE: *Section B-Quality Measures noted above have been addressed in Application. See pages 53-54.*

In accordance with Tennessee Code Annotated, §68-11-1607(c) (5), "...If an application is not deemed complete within sixty (60) days after written notification is given to the applicant by the agency staff that the application is deemed incomplete, the application shall be deemed void." **For this application the sixtieth (60th) day after written notification is September 17, 2018. If this application is not deemed complete by this date, the application will be deemed void.** Agency Rule 0720-10-.03(4) (d) (2) indicates that "Failure of the applicant to meet this deadline will result in the application being considered withdrawn and returned to the contact person. Re-submittal of the application must be accomplished in accordance with Rule 0720-10-.03 and requires an additional filing fee." Please note that supplemental information must be submitted timely for the application to be deemed complete prior to the beginning date of the review cycle which the applicant intends to enter, even if that time is less than the sixty (60) days allowed by the statute. The supplemental information must be submitted with the enclosed affidavit, which shall be executed and notarized; please attach the notarized affidavit to the supplemental information.

If all supplemental information is not received and the application officially deemed complete prior to the beginning of the next review cycle, then consideration of the application could be delayed into a later review cycle. The review cycle for each application shall begin on the first day of the month after the application has been deemed complete by the staff of the Health Services and Development Agency.

Any communication regarding projects under consideration by the Health Services and Development Agency shall be in accordance with T.C.A. § 68-11-1607(d):

- (1) No communications are permitted with the members of the agency once the Letter of Intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the Executive Director and a written summary of such communication shall be made part of the certificate of need file.
- (2) All communications between the contact person or legal counsel for the applicant and the Executive Director or agency staff after an application is deemed complete and placed in the review cycle are prohibited unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the Executive Director or agency staff are not prohibited.

Mr. Stephen H. Rudolph
July 24, 2018
Page 11

Supplemental #1

July 24, 2018

4:16 P.M.

Should you have any questions or require additional information, please do not hesitate to contact this office.

Sincerely,

Mark A. Farber
Deputy Director

Enc.

July 24, 2018

4:16 P.M.

LEASE AGREEMENT

Summary Section

IMPORTANT: Fill in all blanks. Each party to initial below.

Date: _____, 2019

Landlord: DMT Properties, LLC

**Address: 149 Kelsey Lane
Suite 104
Lenoir City, TN 37772**

Tenant: Eye Surgery Center of Lenoir City, LLC

**Address: 5491 Creekwood Park Blvd
Suite B
Lenoir City, Tennessee 37772**

Premises: 3,889 square feet. See Exhibit A attached hereto

Leasehold Improvement Allowance: \$633,350.00 to be paid by Landlord for build out and construction cost to finish Tenant space -5491 Creekwood Park Blvd-Suite B-3,889 sq. ft. Tenant will be responsible for all leasehold improvement costs in excess of allowance.

Base Term of Lease: Ten (10) years, commencing _____, 2019, with successive optional 5-year renewal terms exercisable by Tenant with ninety day (90) written notice prior to end of each term

Commencement Date: _____, 2019

Monthly Base Rent: \$7,500.00 (3,889 sq. ft)

Initial Monthly Taxes: _____

Approved Use of Premises: Ambulatory Surgery Center-Single Specialty Ophthalmology

Initials:

Landlord: _____

Tenant: _____

Board Certified ophthalmologists (the “TEC group”) that will also serve as Member managers and physician owners of the project. The Applicant will consider extending surgical privileges for the ASTC to other qualified ophthalmic physicians once the appropriate physician credentialing and admission policy for surgical privileges has been established by the organization. The ASTC will require 5.4 FTES consisting of three Registered Nurses (RNs), two surgical technicians (part-time), and two administrative (non-patient care) positions. The ASTC intends to contract with other qualified Professional Staff to provide professional anesthesia care at the facility.

B. Rationale for Approval

A certificate of need can only be granted when a project is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of adequate and effective health care in the service area. This section should provide rationale for each criterion using the data and information points provided in Section B. of this application. Please summarize in one page or less each of the criteria:

- 1) Need;
- 2) Economic Feasibility;
- 3) Appropriate Quality Standards; and
- 4) Orderly Development to adequate and effective health care.

RESPONSE:

- 1) ***Need:** There are several critical factors to consider in addressing the current and future needs for providing health care and more specifically eye care. Presently and for the foreseeable future there will be more seniors (65+ age group) and fewer doctors. The growth rate in the number of ophthalmologists at present is flat or 1% which has already created some serious labor shortages and this shortage is expected to escalate over the next ten years. The baby boomer generation continues to move towards the elder age bracket and this combined with lengthening life expectancy are major indicators that a dramatic increase in patients with age-related eye diseases will occur over the next 10 to 30 years. According to recent reports and studies conducted by Prevent Blindness America, the leading causes of vision impairment and blindness in the U.S. are primarily age-related eye diseases including age-related macular degeneration, cataract, diabetic retinopathy, and glaucoma. Cataracts are the most common cause of preventable visual impairment and it is estimated that currently 22 million Americans over the age of 40 have a cataract and by age 80, half of all Americans have a cataract. Estimates suggest that by 2020 the prevalence of cataracts in the U.S. will increase to 30.1million and by 2032 to 38.5 million. There are currently about 9,000 cataract surgeons treating about 4 million cataracts per year. The demographics of Tennessee and the proposed project’s Service Area mirror the national aging trends of the population. The senior population (65+ age group) within the Service Area is expected to increase by 10.7% from 2018 to 2022.*

It will be of increasing importance to be financially efficient, cost-effective and maximize the ophthalmologists productivity in addressing the patient needs in this evolving healthcare environment. There is a growing need to move cataract surgery as well as other eye surgery from

Other Standards and Criteria-

6. **Access to ASTCs.** The majority of the population in a Service Area should reside within 60 minutes average driving time to the facility.

RESPONSE: *The majority of the population in the Service Area in 2018 reside in Loudon and Roane Counties TN-105,656-Total Service Area (over 64%). The proposed facility site is located in Lenoir City, TN-Loudon County and is within the 60 minutes average driving time for all areas within Loudon & Roane Counties. In addition, the proposed facility site is located within the 60 minutes average driving time of every major community within the East Tenn Area as set forth in the Schedule below:*

PROXIMITY OF PROJECT ASTC 5491 CREEKWOOD PARK BLVD- LENOIR CITY, TN-LOUDON COUNTY TO EAST TN COMMUNITIES			Distance - Miles	Drive Time- Minutes
Location-City	County	State		
Friendsville	Blount	TN	14.1	21
Maryville	Blount	TN	22.5	32
Alcoa	Blount	TN	22.3	31
Loudon	Loudon	TN	11.7	18
Philadelphia	Loudon	TN	15.9	17
Athens	McMinn	TN	35.4	37
Decatur	Meigs	TN	43.1	41
Sweetwater	Monroe	TN	22.9	24
Madisonville	Monroe	TN	34.2	37
Oakdale	Morgan	TN	27.7	36
Spring City	Rhea	TN	44.2	49
Kingston	Roane	TN	17.2	19

Source of Information: Google Maps, May 2018

7. **Access to ASTCs.** An applicant should provide information regarding the relationship of an existing or proposed ASTC site to public transportation routes if that information is available.

RESPONSE: *Public transportation services are available to Loudon & Roane County residents through ETHRA Public Transportation which provides public transportation services to residents of all ages in all 16 East Tennessee counties and TennCare Transportation will provide transportation for eligible enrollees to the proposed ASTC site.*

8. **Access to ASTCs.** An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project the origin of potential patients by percentage and county of residence and, if such data are readily available, by zip code, and must note where they are currently being served. Demographics of the Service Area should be included, including the anticipated provision of services to out-of-state patients, as well as the identity of other service providers both in and out of state and the source of out-of-state data. Applicants shall document all other provider alternatives available in the Service Area. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

RESPONSE: *The Applicant has provided and addressed the requested information and documentation including assumptions in other areas and schedules within the application.*

9. **Access and Economic Efficiencies.** An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project patient utilization for each of the first eight quarters following completion of the project. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

RESPONSE: *See Table below. Projected patient utilization is based on actual procedures performed by TEC group for 2017 with increase of 10% cumulative growth (from 2017 to 2019) in Year 1-2019 and 10% annual growth in Year 2-2020. This is conservative based on aging population trends of the Service Area in the 65+ age group projected to be over 27% of the total service area population by 2022 which will increase the demand for comprehensive eye care and surgery.*

D. 1). a) Describe the demographics of the population to be served by July 24, 2018

4:16 P.M.

RESPONSE: *The Demographics of the Service Area is summarized in the Table below. The median age is 46.8 yrs. which is older than the TN median age-38.5 yrs. The 65+ age group is expected to increase by 10.7% from 2018 to 2022 which will require more eye care treatment and cataract surgery for age related vision loss in the immediate future and the coming years. This trend is projected to continue beyond 2022. TennCare enrollees within the Service Area total 20,692 representing 19.6% of total TennCare enrollees per Bureau of TennCare April 2018 report.. The total statewide enrollment in TennCare at April 2018 is 1,432,475 which represents 21.2% of the state's population-6,769,368.*

b) Using current and projected population data from the Department of Health, the most recent enrollee data from the Bureau of TennCare, and demographic information from the US Census Bureau, complete the following table and include data for each county in your proposed service area.

Projected Population Data: <http://www.tn.gov/health/article/statistics-population>

TennCare Enrollment Data: <http://www.tn.gov/tenncare/topic/enrollment-data>

Census Bureau Fact Finder: <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>

Demographic Variable/Geographic Area	Department of Health/Health Statistics							Bureau of the Census				TennCare	
	Total Population-Current Year	Total Population-Projected Year	Total Population-% Change	*Target Population-Current Year	*Target Population-Project Year	*Target Population-% Change	Target Population Projected Year as % of Total	Median Age	Median Household Income	Person Below Poverty Level	Person Below Poverty Level as % of Total	TennCare Enrollees	TennCare Enrollees as % of Total
County A													
County B, etc.													
Service Area Total													
State of TN Total													

* Target Population is population that project will primarily serve. For example, nursing home, home health agency, hospice agency projects typically primarily serve the Age 65+ population; projects for child and adolescent psychiatric services will serve the Population Ages 0-19. Projected Year is defined in select service-specific criteria and standards. If Projected Year is not defined, default should be four years from current year, e.g., if Current Year is 2018, then default Projected Year is 2022.

RESPONSE: *See Demographic Table for Eye Surgery Center of Lenoir City Service Area*

Demographic Table for Eye Surgery Center of Lenoir City Service Area

Demographic Variable/ Geographic Area	Department of Health/Health Statistics*								Bureau of the Census**				TennCare***	
	Population Estimate 2018			Population Estimate 2022			% Increase		Median Age	Median Household Income	# Persons Below Poverty Level	# Persons Below Poverty Level as a % of Total	TennCare Enrollees	TennCare Enrollees as a % of Total
	Total	65+	% 65+	Total	65+	% 65+	65+	Total						
Loudon	52,786	14,131	26.8%	55,216	15,824	28.7%	12.0%	4.6%	47.2	52,995	6,767	12.8%	9,242	17.5%
Roane	52,870	12,322	23.3%	52,707	13,453	25.5%	9.2%	-0.3%	46.3	42,299	8,449	16.0%	11,450	21.7%
Service Area Total	105,656	26,453	25.0%	107,923	29,277	27.1%	10.7%	2.1%	46.8	47,647	15,216	14.4%	20,692	19.6%
State of TN Total	6,769,368	1,119,024	16.5%	6,992,559	1,256,436	18.0%	12.3%	3.3%	38.5	46,574	1,100,169	16.3%	1,432,475	21.2%

* Boyd Center Population Projection Series-May 2018 (TN Counties & State)

Source: Boyd Center for Business & Economic Research, University of Tennessee, Knoxville

Reassembled by the Tennessee Department of Health, Division of Policy, Planning and Assessment.

Note: These projections will not match Boyd Center projections precisely due to rounding.

** Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates

*** Source: TennCare Enrollment Report for April 2018

- 2). Describe the special needs of the service area population, including health disparities, the accessibility to consumers, particularly the elderly, women, racial and ethnic minorities, and low-income groups. Document how the business plans of the facility will take into consideration the special needs of the service area population.

RESPONSE: *The 65+yrs age group is continuing to grow at a significant rate within the Service Area. Accordingly, there is a high prevalence of cataracts, age-related macular degeneration, glaucoma, and other eye diseases which create loss of vision in this age group requiring access to quality care and surgery in a cost effective environment. The proposed Facility can address these needs. Historically, the TEC group physicians have treated patients from all racial, ethnic minorities, and low-income groups without discrimination and have provided a significant amount of indigent care which will continue with the proposed ASTC. The proposed ASTC will participate in all TennCare/ Medicaid programs and Medicare/Medicare Managed programs to address the special needs of these patients.*

- E. 1). Please identify the project's average gross charge, average deduction from operating revenue, and average net charge using information from the Projected Data Chart for Year 1 and Year 2 of the proposed project. Please complete the following table. **RESPONSE:** See Table below.

	Previous Year	Current Year	Year One	Year Two	% Change (Current Year to Year 2)
Gross Charge (Gross Operating Revenue/Utilization Data)	N/A	N/A	\$1,718.97	\$1,718.81	0.00%
Deduction from Revenue (Total Deductions/Utilization Data)	N/A	N/A	\$989.81	\$989.72	0.00%
Average Net Charge (Net Operating Revenue/Utilization Data)	N/A	N/A	\$729.16	\$729.09	0.00%

- 2). Provide the proposed charges for the project and discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the project and the impact on existing patient charges.

RESPONSE: This is a new project and there are no existing (current) charges to be affected by the implementation of this proposal. The proposed charges for the project are set forth in the following Section C. along with anticipated revenue from the project which is set forth in the Projected Data Chart.

- 3). Compare the proposed charges to those of similar facilities in the service area/adjoining service areas, or to proposed charges of projects recently approved by the Health Services and Development Agency. If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

RESPONSE: The proposed gross charge/case (\$1,719.06- YR 1 & \$1718.81-YR 2) and average net charge/case (\$729.24-YR 1 & \$729.08-YR 2) for the project are lower than the overall average gross charge/case than multi-specialty ASTC rates and considerably lower than Hospital Outpatient Department (HOPD) payment rates for the same procedures under Medicare. Proposed charges have been scheduled in accordance with the project's most frequently performed procedures by CPT code in contrast with the current Medicare allowable fee schedule for the Loudon County, TN CSA -28940 effective as of 1/1/2018, and projected utilization data for YRs 1 & 2. See Schedules below.

Eye Surgery Center of Lenoir City (ESCLC)-Charge Schedule
Palmetto GBA-CMS Medicare Allowable Reimbursement Rates
for Ambulatory Surgery Centers-Effective 1/1/2018
Most Frequent Procedures to be Performed-ESCLC

July 24, 2018

4:16 P.M.

CPT #	Description	ESCLC Charge YR 1 & YR 2	Medicare Rates Loudon County-TN CSA (28940)*	CPT Group	Projected Utilization	
					YR 1-2019 # Cases	YR 2-2020 # Cases
65855	TRABECULOPLASTY-LASER-1/MORE SESSION	\$ 600.00	\$ 114.52	Laser-SLT	63	69
66761	IRIDOTOMY /IRIDECTOMY BY LASER	\$ 600.00	\$ 164.33	Yag-Pl		
66821	YAG CAPSULOTOMY	\$ 600.00	\$ 220.59	Yag-Cap	314	345
66825	REPOSITIONING OF IOL	\$ 2,000.00	\$ 860.81	Cat-Sx		
66852	REMOVAL OF LENS MATERIAL	\$ 2,000.00	\$ 1,509.21	Cat-Sx		
66982	CATARACT SURGERY COMPLEX	\$ 2,000.00	\$ 860.81	Cat-Sx		
66984	EXTRACAPSULAR CATARACT REMOVAL	\$ 2,000.00	\$ 860.81	Cat-Sx	1,532	1,686
66985	SECONDARY IOL	\$ 2,000.00	\$ 860.81	Cat-Sx		
66986	EXCHANGE OF IOL	\$ 2,000.00	\$ 860.81	Cat-Sx		
67031	YAG VITREOLYSIS	\$ 600.00	\$ 220.59	Laser-Ret		
67145	PROPHYLAXIS RET DETACH-PHOTOACOAG	\$ 600.00	\$ 365.42	Laser-Ret	19	21
67210	PHOTOACOAG LASER RETINA LESION	\$ 600.00	\$ 219.09	Laser-Ret		
65420	EXCISION OF PTERYGIUM w/o GRAFT	\$ 2,000.00	\$ 701.59	Oth-Sx		
65426	EXCISION OF PTERYGIUM w/ GRAFT	\$ 2,000.00	\$ 701.59	Oth-Sx	8	8
65930	REMOVAL BLOOD CLOT-ANT. SEGMENT	\$ 2,000.00	\$ 860.81	Oth-Sx		
66172	TRABECULOTOMY AB EXT	\$ 2,000.00	\$ 860.81	Glauc-Sx		
66711	CYCLOPHOTOACOAGULATION, ENDOSCOPIC (ECP)	\$ 2,000.00	\$ 860.81	Glauc-Sx	33	36
					1,968	2,165

*Source -published CMS ASC Fee Schedule-Palmetto-GBA Website.

COMPARISON OF GROSS & NET CHARGES OF ANDERSON & KNOX CTY- FACILITIES CY 2017 TO THIS PROJECT (ESCLC)-YR 1-2019/YR 2-2020						
ASTC-County	TOTAL CASES CY2017	TOTAL PROJECTED CASES	GROSS CHARGES	NET AVE CHARGES	GROSS CHARGE/ CASE	NET AVE CHARGE/ CASE
The Eye Surgery Center of Oak Ridge-Anderson Multispecialty-ASTC (Eye & Plastic)	3,850	N/A	\$ 4,546,818	\$ 2,982,697	\$ 1,180.99	\$ 774.73
Eye Surgery Center of East Tennessee-Knox Single Specialty-ASTC Ophthalmology	4,609	N/A	\$ 12,662,986	\$ 3,744,149	\$ 2,747.45	\$ 812.36
Knoxville Eye Surgery Center-Knox Single Specialty-ASTC Ophthalmology	10,660	N/A	\$ 29,532,525	\$ 11,686,924	\$ 2,770.41	\$ 1,096.33
Southeast Eye Surgery Center, LLC-Knox Single Specialty-ASTC Ophthalmology	2,607	N/A	\$ 13,638,270	\$ 3,893,229	\$ 5,231.40	\$ 1,493.38
TOTAL ANDERSON & KNOX CTY- FACILITIES	21,726		\$ 60,380,599	\$ 22,306,999	\$ 2,779.19	\$ 1,026.74
					AVE	AVE
ESCLC-THIS PROJECT						
Single Specialty-ASTC Ophthalmology	YR 1-2019	1,968	\$ 3,382,940	\$ 1,434,980	\$ 1,718.97	\$ 729.16
	YR 2-2020	2,165	\$ 3,721,234	\$ 1,578,478	\$ 1,718.81	\$ 729.09

Source of Information: Joint Annual Reports (JAR)-TN Dept of Health-Div. of Planning And Assessment(PPA)-
Health Facilities Statistics Unit & Projected Data Chart.

2018 JUL 24 PM 4:16

Supplemental #1

July 24, 2018

4:16 P.M.

AFFIDAVIT

STATE OF ALABAMA

COUNTY OF BALDWIN

NAME OF FACILITY: **Eye Surgery Center of Lenoir City, LLC**

I, **Stephen H. Rudolph**, after first being duly sworn, state under oath that I am the applicant named in this Certificate of Need application or the lawful agent thereof, that I have reviewed all of the supplemental information submitted herewith, and that it is true, accurate, and complete.

Stephen H. Rudolph, CPA
Signature/Title consultant

Sworn to and subscribed before me, a Notary Public, this the 23rd day of July, 2018,
witness my hand at office in the County of Baldwin, State of Alabama.

[Signature]
NOTARY PUBLIC

My commission expires 9/6/2021.

HF-0043

Revised 7/02



Eye Surgery Center of Lenoir City

CON APPLICATION

APPENDIX &

ATTACHMENTS



State of Tennessee

Health Services and Development Agency

Andrew Jackson Building, 9th Floor, 502 Deaderick Street, Nashville, TN 37243
www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

Supplemental #1

July 24, 2018

4:16 P.M.

CERTIFICATE OF NEED APPLICATION

SECTION A: APPLICANT PROFILE

1. Name of Facility, Agency, or Institution

Eye Surgery Center of Lenoir City

Name

5491 Creekwood Park Blvd.

Street or Route

Loudon

County

Lenoir City

City

TN

State

37772

Zip Code

Website address: N/A

Note: The facility's name and address **must be** the name and address of the project and **must be** consistent with the Publication of Intent.

2. Contact Person Available for Responses to Questions

Stephen H. Rudolph

Name

CPA

Title

Eyecare Resources, LLC

Company Name

shrudolphsr@yahoo.com

Email address

448 N. Cedar Bluff Rd-Ste 255

Street or Route

Knoxville

City

TN

State

37923-3612

Zip Code

Consultant

Association with Owner

901-219-0173

Phone Number

N/A

Fax Number

NOTE: **Section A** is intended to give the applicant an opportunity to describe the project. **Section B** addresses how the project relates to the criteria for a Certificate of Need by addressing: Need, Economic Feasibility, Contribution to the Orderly Development of Health Care, and Quality Measures.

Please answer all questions on 8½" X 11" white paper, clearly typed and spaced, single or double-sided, in order and sequentially numbered. In answering, please type the question and the response. All questions must be answered. If an item does not apply, please indicate "N/A" (not applicable). Attach appropriate documentation as an Appendix at the end of the application and reference the applicable Item Number on the attachment, i.e., Attachment A.1, A.2, etc. The last page of the application should be a completed signed and notarized affidavit.

3. SECTION A: EXECUTIVE SUMMARY

A. Overview

Please provide an overview not to exceed three pages in total explaining each numbered point.

- 1) Description – Address the establishment of a health care institution, initiation of health services, bed complement changes, and/or how this project relates to any other outstanding but unimplemented certificates of need held by the applicant;
- 2) Ownership structure;
- 3) Service area;
- 4) Existing similar service providers;
- 5) Project cost;
- 6) Funding;
- 7) Financial Feasibility including when the proposal will realize a positive financial margin; and
- 8) Staffing.

RESPONSE:

***Description of Project-** The Applicant-Eye Surgery Center of Lenoir City, LLC is seeking approval to establish a new single specialty ambulatory surgical treatment center (“ASTC”) in Loudon County, TN, for the purpose of performing ophthalmic surgical cases and related ophthalmic laser procedures. Initially, there will be two (2) Board certified ophthalmologists from Eye Care Centers, PLLC dba Tennessee Eye Care (TEC) that will be performing the eye surgery within the facility. The participating physicians are Tom Browning, MD, and Matthew Lowrance, DO. They will be performing ophthalmic surgery and laser procedures that do not require general anesthesia in the ASTC. The proposed ASTC site is located at 5491 Creekwood Park Blvd in Lenoir City, TN on a 2.1 acre parcel in Loudon County, TN. The proposed ASTC will be housed in the same Medical Office Building as the Tennessee Eye Care of Lenoir City medical eye care clinic. The proposed ambulatory surgery center will be approximately 3,889 square feet and will have two (2) operating rooms for performing the ophthalmic surgery and laser eye procedures. The Applicant is a new institution and the project does not include any major medical equipment or require bed complement changes and holds no other outstanding certificates of need.*

***Ownership Structure-** The ASTC will be owned by Eye Surgery Center of Lenoir City, LLC (ESCLC)-Tennessee Limited Liability Company. The LLC will be managed by its member owners who will be performing the surgery in the Facility as well. The member owners and their relationship to the eye care medical practice- Eye Care Centers, PLLC dba Tennessee Eye Care (referred to as the “TEC group”) and the ownership of the building and real estate located at the 5491 Creekwood Park Blvd, Lenoir City (Loudon County), TN 37772-DMT Properties, LLC are set forth in the chart below.*

OWNERSHIP STRUCTURE-ORGANIZATIONAL CHART

EYE CARE CENTERS, PLLC-dba Tennessee Eye Care (TEC)-Medical Practice

EYE SURGERY CENTER OF LENOIR CITY, LLC (ESCLC)-ASTC

DMT PROPERTIES, LLC (DMT)-Real Estate/Building Owner & Landlord

AFFILIATED MEDICAL PRACTICE ENTITY:

Eye Care Centers, PLLC
dba Tennessee Eye Care

Provider Owners:

Thomas A. Browning, MD-Member	25.00%
Matthew D. Lowrance, DO-Member	25.00%
Sylvia Mende-Caulfield, OD-Member	16.66%
David N. Montgomery, OD-Member	16.67%
John M. Hunt, OD-Member	16.67%
	<hr/> 100.00%

Practice Locations:

Eye Care Centers, PLLC dba
Tennessee Eye Care of Harriman
 1798 Roane State Hwy,
 Harriman, TN 37748 (Roane Cty)

Eye Care Centers, PLLC dba
Tennessee Eye Care of Lenoir City
 New Address-Opens Fall 2018
 5491 Creekwood Park Blvd-Ste A
 Lenoir City, TN 37772 (Loudon Cty)

Existing Address to Relocate in Fall 2018
 149 Kelsey Ln
 Ste #104
 Lenoir City, TN 37772 (Loudon Cty)

Eye Care Centers, PLLC dba
Tennessee Eye Care of Knoxville
 6354 Lonas Spring Drive
 Knoxville, Tennessee 37909

Employed Providers:

Paul E. Wittke, MD
 Heidi Herring, OD
 Melissa Pfeffer, OD
 Elissa Fleming, OD
 Benjamin Herring, OD

PARTICIPATING OWNER &
SURGEON IN ESCLC-ASTC:**Provider Owners:**

Thomas A. Browning, MD-Member	50.00%
Matthew D. Lowrance, DO-Mgr.Mem.	50.00%
	<hr/> 100.00%

Project Site Location:

Eye Surgery Center of Lenoir City, LLC
 5491 Creekwood Park Blvd-Ste B
 Lenoir City, TN 37772 (Loudon Cty)

PARTICIPATING Real Estate/Bldg
Owners & Landlord**Provider Owners:**

David N. Montgomery, OD-Chief Mgr	33.34%
Thomas A. Browning, MD-Member	33.33%
Matthew D. Lowrance, DO-Member	33.33%
	<hr/> 100.00%

DMT Properties, LLC

149 Kelsey Ln
 Ste #104
 Lenoir City, TN 37772 (Loudon Cty)

Project Site Location:

5491 Creekwood Park Blvd
 Lenoir City, TN 37772 (Loudon Cty)

Service Area- *The Primary Service Area for this project includes two counties in Tennessee- Loudon and Roane County where the TEC group has two of its three well established medical office locations in Lenoir City and Harriman. The ASTC proposed site is ideally located in Loudon County- Lenoir City and will be housed within the same building alongside the newly constructed Tennessee Eye Care of Lenoir City medical clinic which will plans to be open in fall 2018 The proposed ASTC site is conveniently located less than 20 miles (approx.. 21 minutes) from the affiliated TEC-Harriman office location. The development of this ASTC will provide a convenient quality eye surgery facility for patients referred from the TEC group practice covering this growing market. The two ophthalmic surgeons- Drs. Browning and Lowrance are also participating member owners in the recently licensed and certified single specialty ophthalmic ASTC- Eye Surgery Center of Knoxville, LLC located in Powell, TN- Knoxville County. The TEC-Knoxville practice location can now schedule and refer patient residing in Knox county and the Greater Knoxville area to this convenient facility. Based on utilization of ambulatory surgical and hospital outpatient services provided by the TEC group physicians in 2017 over 64% of the patients served originated from the Loudon and Roane county primary Service Area. None of the current surgical volume of patients seen by the TEC group in the Knox county area are included in the statistics for this application.*

Existing similar service providers- *The TEC physicians currently perform the eye surgeries for patients residing in the primary service area in the two Covenant Health -Hospital facilities located in Roane county-Roane Medical Center -Harriman and Ft. Loudoun Medical Center-Lenoir City in Loudon County. The Surgery Center of Athens in McMinn County ASTCs performs eye services in its multi-specialty ASTC and has two ORs and a Procedure room.*

Project Cost- The Applicant will be building out shelled-in space at a new facility on Creekwood Park Blvd. in Loudon County, TN. The total build-out costs for the space are estimated at \$633,350 for the approximate 3,889 sq. ft. facility to be developed on the 2.1 acre site. Equipment Costs are estimated at \$500,000 and professional fees including architect, legal, engineering, consulting fees and CON fees are estimated to cost \$150,000. The total cost for the project is estimated to be \$1,283,350.

Funding- First Citizens Bank will provide 100% financing of the project's total capital cost funding requirements- \$1,283,350. The bank financing will provide funding through a permanent construction loan for the build-out construction, an equipment loan for \$500,000 with 84-month term, and a working line of credit for \$150,000 to fund the estimated start-up and organizational costs including all professional fees.

Financial Feasibility- The proposed Project will realize a profitable operating margin on an immediate basis once operations are initiated. The projected surgical case load is 1,968 in Year 1 and 2,165 in Year 2 of operation which will generate positive cash flow for the Project and net operating margins in excess of 27% in each of the first two years.

Staffing- The Medical Staff for the single specialty ophthalmic ASTC will initially consist of the two

July 24, 2018

4:16 P.M.

Board Certified ophthalmologists (the “TEC group”) that will also serve as Member managers and physician owners of the project. The Applicant will consider extending surgical privileges for the ASTC to other qualified ophthalmic physicians once the appropriate physician credentialing and admission policy for surgical privileges has been established by the organization. The ASTC will require 5.4 FTES consisting of three Registered Nurses (RNs), two surgical technicians (part-time), and two administrative (non-patient care) positions. The ASTC intends to contract with other qualified Professional Staff to provide professional anesthesia care at the facility.

B. Rationale for Approval

A certificate of need can only be granted when a project is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of adequate and effective health care in the service area. This section should provide rationale for each criterion using the data and information points provided in Section B. of this application. Please summarize in one page or less each of the criteria:

- 1) Need;
- 2) Economic Feasibility;
- 3) Appropriate Quality Standards; and
- 4) Orderly Development to adequate and effective health care.

RESPONSE:

- 1) *Need: There are several critical factors to consider in addressing the current and future needs for providing health care and more specifically eye care. Presently and for the foreseeable future there will be more seniors (65+ age group) and fewer doctors. The growth rate in the number of ophthalmologists at present is flat or 1% which has already created some serious labor shortages and this shortage is expected to escalate over the next ten years. The baby boomer generation continues to move towards the elder age bracket and this combined with lengthening life expectancy are major indicators that a dramatic increase in patients with age-related eye diseases will occur over the next 10 to 30 years. According to recent reports and studies conducted by Prevent Blindness America, the leading causes of vision impairment and blindness in the U.S. are primarily age-related eye diseases including age-related macular degeneration, cataract, diabetic retinopathy, and glaucoma. Cataracts are the most common cause of preventable visual impairment and it is estimated that currently 22 million Americans over the age of 40 have a cataract and by age 80, half of all Americans have a cataract. Estimates suggest that by 2020 the prevalence of cataracts in the U.S. will increase to 30.1million and by 2032 to 38.5 million. There are currently about 9,000 cataract surgeons treating about 4 million cataracts per year. The demographics of Tennessee and the proposed project's Service Area mirror the national aging trends of the population. The senior population (65+ age group) within the Service Area is expected to increase by 15.9% from 2016 to 2020.*

It will be of increasing importance to be financially efficient, cost-effective and maximize the ophthalmologists productivity in addressing the patient needs in this evolving healthcare environment. There is a growing need to move cataract surgery as well as other eye surgery from

July 24, 2018

4:16 P.M.

multi-specialty ASTCs and hospital settings to single specialty ophthalmic ASTCs where efficiency may be maximized. Ophthalmic ASTCs are able to concentrate on a smaller subset of procedures and gain efficiencies in equipment and technology, supply cost management, training of staff, and care of the patients in the preoperative and postoperative care area. One of the best ways to increase efficiency while addressing the growing needs for cataract and other eye surgery over the next decade will be to consolidate these ophthalmic cases within the Service Area into the Applicant's proposed single specialty ophthalmic ASTC.

The TEC group of ophthalmic surgeons currently perform their ophthalmic surgical cases and laser eye procedures within the Service Area in two different hospital locations and one multi-specialty ASTC. Some of the eye laser procedures are currently performed at their medical office. Both of these physicians provide eye care and perform surgery in rural hospitals beyond the Service Area. This proposed ASTC is intended to serve the Loudon & Roane County-based practice locations for the TEC group within the Service Area and the utilization, statistics, and projections in this application do not include these patients served beyond the Service Area. None of the existing ASTCs or hospital locations can address the total comprehensive eye care needs of the patients and ophthalmic surgeons within the TEC group.

There is a definitive need for additional surgical capacity in this Service Area since there are no existing ASTCs. The proposed project complies with State Guidelines and will not adversely affect the existing facilities.

The Applicant's goal is to increase the efficiency of the services that the TEC group of physicians can deliver by providing the entire scope of ophthalmic surgery and eye laser procedures to its patients at one convenient location in a quality care, cost-effective environment. HSDA approval of this ASTC development will enable this group to accomplish this goal and provide the latest technological advances in eye surgery to their patients.

2) Economic Feasibility: *The ASTC's projected surgical caseloads from the two ophthalmic surgeons in the TEC group for the first two years of operation -1968 Cases-YR 1 & 2,165 Cases-YR2 will generate significant positive cash flow for the Project. The net operating margin for the project is projected to exceed 27% in each year. The funding requirements for Applicant's total project cost of have been arranged through bank financing available from First Citizens Bank-Knoxville on favorable terms pending HSDA approval. The two Board Certified ophthalmologists-TEC group and their respective practices have continued to grow in patient volume and the surgical volume they generate will assure economic feasibility of the project. The single specialty ophthalmic ASTC facility can be developed at a reasonable cost and designed to achieve maximum operational efficiency and utilization at competitive charges. The accessibility and convenience of the facility for both physicians and their patients will also contribute to the project's success and overall economic feasibility.*

3) Appropriate Quality Standards: *Each of the two medical practices associated with the project have been successfully providing quality eye care services to patients in the Knoxville area for over twenty years. The two ophthalmic surgeons are all Board-certified and highly respected within the East Tennessee healthcare community for providing quality eye care and surgery - Tom Browning, MD, and Matthew Lowrance, DO. Dr. Tom Browning and Dr. Matthew Lowrance are fellowship trained as subspecialists in medical retina. The Applicant's group is committed to excellence and will seek accreditation from Accreditation Association of Ambulatory Health Care (AAAHC) and will maintain the highest degree in standard of care for the patients they serve within the Facility.*

4) Orderly Development to adequate and effective health care: *No existing ASTCs exist in the service area. The surgical capacity of the existing ASTCs providing eye services in the area is currently inadequate to provide effective health care for the aging population and the associated high prevalence of age-related eye diseases. The best solution for addressing this issue is to provide additional surgical capacity through the approval of cost-effective single specialty*

July 24, 2018

4:16 P.M.

ophthalmic ASTC facilities designed for both patient and physician convenience, accessibility, and efficiency. The approval of this project will allow the two ophthalmic surgeons within the TEC group to maximize their productivity and expand surgical capacity within the Service Area to a more appropriate level while addressing the growth in eye surgery required for this aging population.

C. Consent Calendar Justification

If Consent Calendar is requested, please provide the rationale for an expedited review.

A request for Consent Calendar must be in the form of a written communication to the Agency's Executive Director at the time the application is filed.

RESPONSE: *Not Applicable-N/A*

July 24, 2018

4:16 P.M.

4. SECTION A: PROJECT DETAILSOwner of the Facility, Agency or InstitutionA. Eye Surgery Center of Lenoir City, LLC

865-988-6649

Name

Phone Number

149 Kelsey Lane, Ste 104

Loudon

Street or Route

County

Lenoir City

TN

37772

City

State

Zip Code

B. Type of Ownership of Control (Check One)

A. Sole Proprietorship _____

F. Government (State of TN or
Political Subdivision) _____

B. Partnership _____

G. Joint Venture _____

C. Limited Partnership _____

H. Limited Liability Company

X

D. Corporation (For Profit) _____

I. Other (Specify) _____

E. Corporation (Not-for-Profit) _____

Attach a copy of the partnership agreement, or corporate charter and certificate of corporate existence. Please provide documentation of the active status of the entity from the Tennessee Secretary of State's web-site at <https://tnbear.tn.gov/ECommerce/FilingSearch.aspx>. **Attachment Section A-4A.**

Describe the existing or proposed ownership structure of the applicant, including an ownership structure organizational chart. Explain the corporate structure and the manner in which all entities of the ownership structure relate to the applicant. As applicable, identify the members of the ownership entity and each member's percentage of ownership, for those members with 5% ownership (direct or indirect) interest.

RESPONSE: See Attachment Section A-4A.

5. Name of Management/Operating Entity (If Applicable)

Name _____

Street or Route _____

County _____

City _____

State _____

Zip Code _____

Website address: _____

For new facilities or existing facilities without a current management agreement, attach a copy of a draft management agreement that at least includes the anticipated scope of management services to be provided, the anticipated term of the agreement, and the anticipated management fee payment methodology and schedule. For facilities with existing management agreements, attach a copy of the fully executed final contract. Attachment Section A-5. RESPONSE: N/A

July 24, 2018

4:16 P.M.

6A. Legal Interest in the Site of the Institution (Check One)

- | | | | |
|-------------------------|-------|--------------------|----------------|
| A. Ownership | _____ | D. Option to Lease | _____ <u>X</u> |
| B. Option to Purchase | _____ | E. Other (Specify) | _____ |
| C. Lease of _____ Years | _____ | | |

Check appropriate line above: For applicants or applicant's parent company/owner that currently own the building/land for the project location, attach a copy of the title/deed. For applicants or applicant's parent company/owner that currently lease the building/land for the project location, attach a copy of the fully executed lease agreement. For projects where the location of the project has not been secured, attach a fully executed document including Option to Purchase Agreement, Option to Lease Agreement, or other appropriate documentation. Option to Purchase Agreements **must include** anticipated purchase price. Lease/Option to Lease Agreements **must include** the actual/anticipated term of the agreement **and** actual/anticipated lease expense. The legal interests described herein **must be valid** on the date of the Agency's consideration of the certificate of need application.

6B. Attach a copy of the site's plot plan, floor plan, and if applicable, public transportation route to and from the site on an 8 1/2" x 11" sheet of white paper, single or double-sided. DO NOT SUBMIT BLUEPRINTS. Simple line drawings should be submitted and need not be drawn to scale.

1) Plot Plan **must include**:

- a. Size of site (*in acres*);
- b. Location of structure on the site;
- c. Location of the proposed construction/renovation; and
- d. Names of streets, roads or highway that cross or border the site.

2) Attach a floor plan drawing for the facility which includes legible labeling of patient care rooms (noting private or semi-private), ancillary areas, equipment areas, etc. On an 8 1/2 by 11 sheet of paper or as many as necessary to illustrate the floor plan.

3) Describe the relationship of the site to public transportation routes, if any, and to any highway or major road developments in the area. Describe the accessibility of the proposed site to patients/clients.

RESPONSE:

Attachment Section A-6A, 6B-1 a-d, 6B-2, 6B-3.

See Attachments A-6A, 6B-1 a-d, 6B-2, 6B-3.

July 24, 2018

4:16 P.M.

RESPONSE: *The Project site has excellent accessibility for both the patients and the TFC group of physicians associated with the proposed ASTC. The location on Creekwood Park Blvd is less than 3 minutes from Interstate-75 Exit #81-TN Hwy 321 in Lenoir City, TN. The proximity to Interstate 75 and TN Hwy 321 enhances the access to major communities in the counties surrounding Loudon County including Roane County which is included in the Applicant's Primary Service Area. The Schedule below indicates the proximity of the ASTC site to the practice locations associated with the Project and Hospital locations within Loudon & Roane County.*

PROXIMITY OF PROJECT ASTC (CREEKWOOD PARK BLVD-LENOIR CITY, TN) TO ASTCS/HOSPITALS & PRACTICE LOCATIONS IN SERVICE AREA			July 24, 2018 4:10 P.M.	
ASTC	City (TN)	County (TN)	Distance- Miles	Drive Time- Minutes

Roane Medical Center Hospital

8045 Roane Medical Center Dr

Harriman, TN 37748 (Roane Cty)

Roane

20.2

23.0

Eye Care Centers, PLLC dba**Tennessee Eye Care of Harriman**

1798 Roane State Hwy,

Harriman, TN 37748 (Roane Cty)

Roane

19.4

21.0

Eye Care Centers, PLLC dba**Tennessee Eye Care of Lenoir City**

New Address-Opens Fall 2018

5491 Creekwood Park Blvd-Ste A

Lenoir City, TN 37772 (Loudon Cty)

Loudon

0.0

0.0

Existing Address to Relocate in Fall 2018

149 Kelsey Ln

Ste #104

Lenoir City, TN 37772 (Loudon Cty)

Loudon

1.6

4.0

Ft. Loudoun Medical Center-Hospital

550 Fort Loudoun Medical Center Dr

Lenoir City, TN 37772 (Loudon Cty)

Loudon

1.6

4.0

Eye Care Centers, PLLC dba**Tennessee Eye Care of Knoxville**

6354 Lonas Spring Drive

Knoxville, Tennessee 37909

Knox

20.3

26.0

The Surgery Center of Athens

105 North Meadows Dr

Athens, TN 37303

McMinn

36.2

40.0

July 24, 2018

4:16 P.M.

7. **Type of Institution** (Check as appropriate—more than one response may apply)

- | | |
|--|--|
| A. Hospital (Specify) _____ | H. Nursing Home _____ |
| B. Ambulatory Surgical Treatment Center (ASTC), Multi-Specialty _____ | I. Outpatient Diagnostic Center _____ |
| C. ASTC, Single Specialty <u>X</u> _____ | J. Rehabilitation Facility _____ |
| D. Home Health Agency _____ | K. Residential Hospice _____ |
| E. Hospice _____ | L. Nonresidential Substitution-Based Treatment Center for Opiate Addiction _____ |
| F. Mental Health Hospital _____ | M. Other (Specify) _____ |
| G. Intellectual Disability Institutional Habilitation Facility ICF/IID _____ | |

Check appropriate lines(s).

8. **Purpose of Review** (Check appropriate lines(s) – more than one response may apply)

- | | |
|--|--|
| A. New Institution <u>X</u> _____ | F. Change in Bed Complement _____
[Please note the type of change by underlining the appropriate response: Increase, Decrease, Designation, Distribution, Conversion, Relocation] |
| B. Modifying an ASTC with limitation still required per CON _____ | |
| C. Addition of MRI Unit _____ | |
| D. Pediatric MRI _____ | |
| E. Initiation of Health Care Service as defined in T.C.A. §68-11-1607(4) (Specify) _____ | G. Satellite Emergency Dept. _____ |
| | H. Change of Location _____ |
| | I. Other (Specify) _____ |

9. **Medicaid/TennCare, Medicare Participation**

MCO Contracts [Check all that apply] ****To be applied for by Applicant

X AmeriGroup X United Healthcare Community Plan X BlueCare X TennCare SelectMedicare Provider Number To be applied for by Applicant _____Medicaid Provider Number To be applied for by Applicant _____Certification Type Ambulatory Surgery Center Treatment Center-Single Specialty _____

If a new facility, will certification be sought for Medicare and/or Medicaid/TennCare?

Medicare X Yes No N/A Medicaid/TennCare X Yes No N/A

July 24, 2018

10.

Bed Complement Data**RESPONSE:** N/A

A.

Please indicate current and proposed distribution and certification of facility beds.

	<u>Current Licensed</u>	<u>Beds Staffed</u>	<u>Beds Proposed</u>	<u>*Beds Approved</u>	<u>**Beds Exempted</u>	<u>TOTAL Beds at Completion</u>
1) Medical						
2) Surgical						
3) ICU/CCU						
4) Obstetrical						
5) NICU						
6) Pediatric						
7) Adult Psychiatric						
8) Geriatric Psychiatric						
9) Child/Adolescent Psychiatric						
10) Rehabilitation						
11) Adult Chemical Dependency						
12) Child/Adolescent Chemical Dependency						
13) Long-Term Care Hospital						
14) Swing Beds						
15) Nursing Home – SNF (Medicare only)						
16) Nursing Home – NF (Medicaid only)						
17) Nursing Home – SNF/NF (dually certified Medicare/Medicaid)						
18) Nursing Home – Licensed (non-certified)						
19) ICF/IID						
20) Residential Hospice						
TOTAL						

*Beds approved but not yet in service

**Beds exempted under 10% per 3 year provision

B. Describe the reasons for change in bed allocations and describe the impact the bed change will have on the applicant facility's existing services. Attachment Section A-10. **RESPONSE:** N/A

C. Please identify all the applicant's outstanding Certificate of Need projects that have a licensed bed change component. If applicable, complete chart below. **RESPONSE:** N/A

<u>CON Number(s)</u>	<u>CON Expiration Date</u>	<u>Total Licensed Beds Approved</u>

11. Home Health Care Organizations – Home Health Agency, Hospice Agency (including Residential Hospice), identify the following by checking all that apply: **RESPONSE:** N/A

	Existing Licensed County	Parent Office County	Proposed Licensed County		Existing Licensed County	Parent Office County	Proposed Licensed County
Anderson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lauderdale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bedford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lawrence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Benton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lewis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bledsoe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lincoln	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blount	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Loudon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	McMinn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	McNairy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cannon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Macon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carroll	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Madison	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cheatham	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marshall	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chester	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Maury	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Claiborne	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Meigs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Monroe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cocke	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Montgomery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coffee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Moore	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crockett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Morgan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cumberland	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Obion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Davidson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Overton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decatur	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Perry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DeKalb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pickett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dickson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Polk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Putnam	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fayette	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rhea	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fentress	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Roane	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Franklin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Robertson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gibson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rutherford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Giles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Scott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grainger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sequatchie	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Greene	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sevier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grundy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Shelby	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hamblen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Smith	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hamilton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Stewart	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hancock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sullivan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardeman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sumner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tipton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hawkins	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trousdale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Haywood	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Unicoi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henderson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Van Buren	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hickman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Warren	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Houston	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Washington	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Humphreys	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wayne	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jackson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Weakley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jefferson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	White	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Johnson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Williamson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Knox	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

July 24, 2018

12. Square Footage and Cost Per Square Footage Chart

Unit/Department	Existing Location	Existing SF	Temporary Location	Proposed Final Location	Proposed Final Square Footage						
					Renovated	New	Total				
Eye Surgery Center of Lenoir City- ASTC (SS)	N/A	-0-		5491 Creekwood Park Blvd-Ste B Lenoir City, TN	3,889		3,889				
Unit/Department GSF Sub-Total					3,889		3,889				
Other GSF Total											
Total GSF					3,889		3,889				
*Total Cost					\$583,350.00		\$583 350.00				
**Cost Per Square Foot					\$150.00		\$150.00				
**Note- Insufficient Data- Renovated Construction & New Construction not available for ASTCs-2015 to 2017 in Applicant Toolbox. Total Construction 1st Quartile-\$175.00/sq ft., Median-\$197.86/sq.ft, 3rd Quartile-\$250.50/sq ft for approved applications for Years 2015 to 2017-ASTCS. Total Cost/sq.ft is below 1st quartile For proposed project. Cost per Square Foot Is Within Which Range (For quartile ranges, please refer to the Applicant's Toolbox on www.tn.gov/hsda)					<input type="checkbox"/> Below 1 st Quartile	<input type="checkbox"/> Below 1 st Quartile	<input checked="" type="checkbox"/> Below 1 st Quartile				
					<input type="checkbox"/> Between 1 st and 2 nd Quartile	<input type="checkbox"/> Between 1 st and 2 nd Quartile	<input type="checkbox"/> Between 1 st and 2 nd Quartile				
					<input type="checkbox"/> Between 2 nd and 3 rd Quartile	<input type="checkbox"/> Between 2 nd and 3 rd Quartile	<input type="checkbox"/> Between 2 nd and 3 rd Quartile				
					<input type="checkbox"/> Above 3 rd Quartile	<input type="checkbox"/> Above 3 rd Quartile	<input type="checkbox"/> Above 3 rd Quartile				

* The Total Construction Cost should equal the Construction Cost reported on line A5 of the Project Cost Chart.

** Cost per Square Foot is the construction cost divided by the square feet. Please do not include contingency costs.

Headers

13. MRI, PET, and/or Linear Accelerator

1. Describe the acquisition of any Magnetic Resonance Imaging (MRI) scanner that is adding a MRI scanner in counties with population less than 250,000 or initiation of pediatric MRI in counties with population greater than 250,000 and/or
2. Describe the acquisition of any Positron Emission Tomographer (PET) or Linear Accelerator if initiating the service by responding to the following:

A. Complete the chart below for acquired equipment. **RESPONSE:** N/A

<input type="checkbox"/> Linear Accelerator	Mev _____	Types:	<input type="checkbox"/> SRS <input type="checkbox"/> IMRT <input type="checkbox"/> IGRT <input type="checkbox"/> Other _____
	Total Cost*: _____		<input type="checkbox"/> By Purchase
	<input type="checkbox"/> New <input type="checkbox"/> Refurbished		<input type="checkbox"/> By Lease Expected Useful Life (yrs) _____
			<input type="checkbox"/> If not new, how old? (yrs) _____
<input type="checkbox"/> MRI	Tesla: _____	Magnet:	<input type="checkbox"/> Breast <input type="checkbox"/> Extremity <input type="checkbox"/> Open <input type="checkbox"/> Short Bore <input type="checkbox"/> Other _____
	Total Cost*: _____		<input type="checkbox"/> By Purchase
	<input type="checkbox"/> New <input type="checkbox"/> Refurbished		<input type="checkbox"/> By Lease Expected Useful Life (yrs) _____
			<input type="checkbox"/> If not new, how old? (yrs) _____
<input type="checkbox"/> PET	<input type="checkbox"/> PET only <input type="checkbox"/> PET/CT <input type="checkbox"/> PET/MRI		<input type="checkbox"/> By Purchase
	Total Cost*: _____		<input type="checkbox"/> By Lease Expected Useful Life (yrs) _____
	<input type="checkbox"/> New <input type="checkbox"/> Refurbished		<input type="checkbox"/> If not new, how old? (yrs) _____

* As defined by Agency Rule 0720-9-.01(13)

- B. In the case of equipment purchase, include a quote and/or proposal from an equipment vendor. In the case of equipment lease, provide a draft lease or contract that at least includes the term of the lease and the anticipated lease payments along with the fair market value of the equipment.

RESPONSE: N/A

- C. Compare lease cost of the equipment to its fair market value. Note: Per Agency Rule, the higher cost must be identified in the project cost chart. **RESPONSE:** N/A

D. Schedule of Operations: **RESPONSE:** N/A

Location	Days of Operation (Sunday through Saturday)	Hours of Operation (example: 8 am – 3 pm)
Fixed Site (Applicant)	_____	_____
Mobile Locations (Applicant)	_____	_____
(Name of Other Location)	_____	_____
(Name of Other Location)	_____	_____

- E. Identify the clinical applications to be provided that apply to the project. **RESPONSE:** N/A

- F. If the equipment has been approved by the FDA within the last five years provide documentation of the same. **RESPONSE:** N/A

SECTION B: GENERAL CRITERIA FOR CERTIFICATE OF NEED

In accordance with T.C.A. § 68-11-1609(b), "no Certificate of Need shall be granted unless the action proposed in the application for such Certificate is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of health care." Further standards for guidance are provided in the State Health Plan developed pursuant to T.C.A. § 68-11-1625.

The following questions are listed according to the four criteria: (1) Need, (2) Economic Feasibility, (3) Applicable Quality Standards, and (4) Contribution to the Orderly Development of Health Care. Please respond to each question and provide underlying assumptions, data sources, and methodologies when appropriate. Please type each question and its response on an 8 1/2" x 11" white paper, single-sided or double sided. All exhibits and tables must be attached to the end of the application in correct sequence identifying the question(s) to which they refer, unless specified otherwise. ***If a question does not apply to your project, indicate "Not Applicable (NA)."***

QUESTIONS

SECTION B: NEED

- A. Provide a response to each criterion and standard in Certificate of Need Categories in the State Health Plan that are applicable to the proposed project. Criteria and standards can be obtained from the Tennessee Health Services and Development Agency or found on the Agency's website at <http://www.tn.gov/hsda/article/hsda-criteria-and-standards>.

Standards & Criteria-TN HSDA for CON Determination-ASTC:

Assumptions in Determination of Need- The need for an ambulatory surgical treatment center shall be based upon the following assumptions:

1. Operating Rooms-
 - a. An operating room is available 250 days per year, 8 hours per day.
 - b. The estimated average time per Case in an Operating Room is 65 minutes.
 - c. The average time for clean-up and preparation between Operating Room Cases is 30 minutes.
 - d. The optimum utilization of a dedicated, outpatient, general-purpose Operating Room is 70% of full capacity. $70\% \times 250 \text{ days/year} \times 8 \text{ hours/day} \div 95 \text{ minutes} = 884 \text{ Cases per year}$.

RESPONSE: *The proposed ophthalmic ASTC will be in operation 5 days per week, 8 hours per day, excluding national holidays which meets the criteria. The two operating rooms will be staffed*

July 24, 2018

4:16 P.M.

for three days per week initially, which is more than adequate to accommodate the projected surgical caseload in Years 1 & 2. The estimated average time per Case in Operating Room for eye cases is well below 65 minutes. Based on industry average for ophthalmic surgery centers (Beckers ASC Review-Oct. 2013) the median case time for cataract surgery is 14 minutes. Cataract surgical cases are estimated to be 98.6% of the total procedures to be performed in the two dedicated operating rooms within the ASTC. Glaucoma and other eye surgical cases are estimated to have an average surgical case time of 30 minutes. The average clean-up and preparation for all eye cases in the operating rooms is estimated at 13 minutes (Median time reported in Current Ophthalmology-2015) well below the average time of 30 minutes set forth in the criteria. The Applicant projects 1,968 cases in Year 1 (984 cases/OR) and 2,165 cases in Year 2 (1,083cases/OR) to be performed in the dedicated outpatient operating rooms which is well over 100% capacity and exceeds the optimum utilization of 884 Cases per year.

2. Procedure Rooms-

- a. A procedure room is available 250 days per year, 8 hours per day.
- b. The estimated average time per outpatient Case in a procedure room is 30 minutes.
- c. The average time for clean-up and preparation between Procedure Room Cases is 15 minutes.
- d. The optimum utilization of a dedicated, outpatient, general-purpose outpatient Procedure Room is 70% of full capacity. $70\% \times 250 \text{ days/year} \times 8 \text{ hours/day} \div 45 \text{ minutes} = 1867 \text{ Cases per year}$.

RESPONSE: .Not Applicable (N/A) -The Applicant does not intend to have a procedure room and will perform laser procedures in the Operating Room.

Determination of Need-

1. Need. The minimum numbers of 884 Cases per Operating Room and 1867 Cases per Procedure Room are to be considered as baseline numbers for purposes of determining Need. An applicant should demonstrate the ability to perform a minimum of 884 Cases per Operating Room and/or 1867 Cases per Procedure Room per year, except that an applicant may provide information on its projected case types and its assumptions of estimated average time and clean up and preparation time per Case if this information differs significantly from the above-stated assumptions. It is recognized that an ASTC may provide a variety of services/Cases and that as a result the estimated average time and clean up and preparation time for such services/Cases may not meet the minimum numbers set forth herein. It is also recognized that an applicant applying for an ASTC Operating Room(s) may apply for a Procedure Room, although the anticipated utilization of that Procedure Room may not meet the base guidelines contained here. Specific reasoning and explanation for the inclusion in a CON application of such a Procedure Room must be provided. An applicant that desires to limit its Cases to a specific type or types should apply for a Specialty ASTC.

RESPONSE: The Applicant will limit its cases in the proposed ASTC to ophthalmology and the project will include two operating rooms which will be utilized for ophthalmic surgical cases as well as ophthalmic laser procedures. Surgical Coordinators can effectively schedule

July 24, 2018

4:16 P.M.

these eye laser procedures to be performed by the specialists in the operating room at the end of a normal surgical day and therefore Applicant will not require a separate Procedure Room. These eye laser procedures are often the most cost effective treatment for certain vision modalities and do not generally require anesthesia and limited staffing. A procedure room will not be necessary in this ophthalmic ASTC since proper scheduling by the staff can accommodate these procedures

2. **Need and Economic Efficiencies.** An applicant must estimate the projected surgical hours to be utilized per year for two years based on the types of surgeries to be performed, including the preparation time between surgeries. Detailed support for estimates must be provided.

RESPONSE: *See the Case Utilization & Time Requirements Schedule for the proposed ESCLC project below.*

July 24, 2018

4:16 P.M.

EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
CASE UTILIZATION & TIME REQUIREMENTS

<i>Type of Procedure:</i>	PROJECTED YR 1 Cases	AVE SX CASE TIME Min./Cs	AVE CLEAN-UP & PREP TIME Min./Cs	TOTAL Min./Cs	YR 1 MINUTES	YR 1 HOURS	Utilization % of Capacity*
Cataract Surgery	1,532	14	13	27	41,372	689.5	
Glaucoma Surgery	33	30	13	43	1,419	23.7	
Other Eye Care Surgery	8	30	13	43	331	5.5	
Subtotal	1,573	N/A	N/A	N/A	43,122	718.7	29.95%
Yag Laser Procedures	314	5	10	15	4,703	78.4	
Retina Laser Procedures	19	5	10	15	281	4.7	
SLT Laser Procedures	63	5	10	15	941	15.7	
Subtotal	395	N/A	N/A	N/A	5,924	98.7	4.11%
Total for 2 Ors	1,968	N/A	N/A	N/A	92,168	817.4	34.06%

<i>Type of Procedure:</i>	PROJECTED YR 2 Cases	AVE SX CASE TIME Min./Cs	AVE CLEAN-UP & PREP TIME Min./Cs	TOTAL Min./Cs	YR 2 MINUTES	YR 2 HOURS	Utilization % of Capacity*
Cataract Surgery	1,686	14	13	27	45,509	758.5	
Glaucoma Surgery	36	30	13	43	1,561	26.0	
Other Eye Care Surgery	8	30	13	43	364	6.1	
Subtotal	1,730	N/A	N/A	N/A	47,434	790.6	32.94%
Yag Laser Procedures	345	5	10	15	5,173	86.2	
Retina Laser Procedures	21	5	10	15	309	5.1	
SLT Laser Procedures	69	5	10	15	1,035	17.2	
Subtotal	434	N/A	N/A	N/A	6,516	108.6	4.52%
Total for 2 Ors	2,165	N/A	N/A	N/A	101,385	899.2	37.47%

*Utilization Capacity of Two Operating Rooms based on 2 ORs @ 3 days/wk x 8 hrs x 50 wks =2,400 hrs staffed/YR

3. **Need; Economic Efficiencies; Access.** To determine current utilization and need, an applicant should take into account both the availability and utilization of either: a) all existing outpatient Operating Rooms and Procedure Rooms in a Service Area, including physician office based surgery rooms (when those data are officially

July 24, 2018

4:16 P.M.

reported and available) OR b) all existing comparable outpatient Operating Rooms and Procedure Rooms based on the type of Cases to be performed. Additionally, applications should provide similar information on the availability of nearby out-of-state existing outpatient Operating Rooms and Procedure Rooms, if that data are available, and provide the source of that data. Unstaffed dedicated outpatient Operating Rooms and unstaffed dedicated outpatient Procedure Rooms are considered available for ambulatory surgery and are to be included in the inventory and in the measure of capacity.

RESPONSE: *There are no existing ASTCs within the Applicant's Service Area which currently provide eye services.*

4. **Need and Economic Efficiencies.** An applicant must document the potential impact that the proposed new ASTC would have upon the existing service providers and their referral patterns.
1. A CON application to establish an ASTC or to expand existing services of an ASTC should not be approved unless the existing ambulatory surgical services that provide comparable services regarding the types of Cases performed, if those services are known and relevant, within the applicant's proposed Service Area or within the applicant's facility are demonstrated to be currently utilized at 70% or above.
 2. The Division recognizes that estimated or average cleanup/preparation times and Case times may vary significantly by specialty and type of Case.
 3. The Department of Health is currently in the rule-making process necessary to implement the statute requiring the collection of office-based surgery data (Public Chapter 373, 2007). The Division recognizes that the Department of Health does not have sufficient data available on hospital ambulatory/outpatient surgery rooms at this time to include them in the determination of need; however, the Division plans to work with stakeholders towards this goal

RESPONSE: *Hospital outpatient surgery rooms were not included in this review due to insufficient data available and since applicant's proposed ASTC will be limited to ophthalmic surgical procedures and should not have an adverse impact on these facilities. No cases are currently being performed in the other existing ASTCs providing eye services within the Service Area. Based on this information the Applicant's proposed ASTC would not adversely impact the existing service providers.*

July 24, 2018

4:16 P.M.

EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
UTILIZATION-FYE 2015/FYE 2016/FYE 2017

ESCLC UTILIZATION- # SURGICAL CASES:

	FYE 2015 Total	FYE 2016 Total	Increase % Cases	FYE 2017 Total	Increase % Cases
Cataract Surgery	984	1,359		1,393	
Glaucoma Surgery	11	34		30	
Other Eye Care Surgery	2	3		7	
Yag Laser Procedures	197	262		285	
Retina Laser Procedures	25	28		17	
SLT Laser Procedures	46	73		57	
Total	1,265	1,759	39.05%	1,789	1.71%

ASTC or Hospital Facility Utilized:

	OR Cases	PR Cases	OR Cases	PR Cases	OR Cases	PR Cases
Ft. Loudon Medical Ctr-Hospital-Lenoir City,TN	412		691		679	-
Roane Medical Ctr.-Harriman,TN	462		555		588	
The Surgery Center of Athens-Athens, TN	123		138		164	
Medical Offices of TEC Group		268		375		358
OR Cases	997		1,384		1,431	
PR Cases		268		375		358
Total-OR+PR	1,265		1,759		1,789	

EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
IMPACT ON EXISTING ASTCS

ASTC	Total- OR/PR	Utilization per JAR Reports-2017			TEC Utiliz.-2017		W/O TEC Cases	
		Total-OR+PR	OR Cases	PR Cases	OR Cases	PR Cases	OR Cases	PR Cases
The Surgery Center of Athens								
Multispecialty-ASTC	2 / 1 = 3							
Ophthalmology		1,199	1,199	-	164		1,035	-
Total Outpatient Surgeries		2,311	2,311	-	164		2,147	-
Utilization % based on State Guidelines			91.49%	N/A			85.00%	N/A

*State Guidelines-TN HSDA in State Health Plan-1,263 CS/OR (70% min-884 CS/OR)

*State Guidelines-TN HSDA in State Health Plan-2,667 CS/PR (70% min-1,867 CS/PR)

Source of Information: Joint Annual Reports (JAR)-TN Dept of Health-Div. of Planning And Assessment(PPA)-
 Health Facilities Statistics Unit & Clinical data/information from TEC Group Medical Practice.

5. **Need and Economic Efficiencies.** An application for a Specialty ASTC should present its projections for the total number of cases based on its own calculations for the projected length of time per type of case, and shall provide any local, regional, or national data in support of its methodology. An applicant for a Specialty ASTC should provide its own definitions of the surgeries and/or procedures that will be performed and whether the Surgical Cases will be performed in an Operating Room or a Procedure Room. An applicant for a Specialty ASTC must document the potential impact that the proposed new ASTC would have upon the existing service providers and their referral patterns. A CON proposal to establish a Specialty ASTC or to expand existing services of a Specialty ASTC shall not be approved unless the existing ambulatory surgical services that provide comparable services regarding the types of Cases performed within the applicant's proposed Service Area or within the applicant's facility are demonstrated to be currently utilized at 70% or above. An applicant that is granted a CON for a Specialty ASTC shall have the specialty or limitation placed on the CON.

RESPONSE: *The Applicant is applying for CON approval and licensure as a Specialty ASTC in Ophthalmology. The information and documentation has been included in other sections within the application. The proposed Specialty ASTC if approved will have a positive impact on the Service Area as there are no existing specialty ASTCs providing eye services within the service area. The only ASTC close to the service area is The Surgery Center of Athens and it is a multi-specialty ASTC and will not experience a significant decrease since the majority of the TEC surgical volume is generated in Lenoir City and Harriman practice locations.*

**EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
IMPACT ON EXISTING ASTCS**

ASTC	Total-OR/PR	Utilization per JAR Reports-2017			TEC Utiliz.-2017		W/O TEC Cases	
		Total-OR+P	OR Case	PR Cases	OR Case	PR Cases	OR Cases	PR Cases
The Surgery Center of Athens								
Multispecialty-ASTC	2 / 1 = 3							
Ophthalmology		1,199	1,199	-	164		1,035	-
Total Outpatient Surgeries		2,311	2,311	-	164		2,147	-
Utilization % based on State Guidelines			91.49%	N/A			85.00%	N/A

*State Guidelines-TN HSDA in State Health Plan-1,263 CS/OR (70% min-884 CS/OR)

*State Guidelines-TN HSDA in State Health Plan-2,667 CS/PR (70% min-1,867 CS/PR)

Source of Information: Joint Annual Reports (JAR)-TN Dept of Health-Div. of Planning And Assessment(PPA)-Health Facilities Statistics Unit & Clinical data/information from TEC Group Medical Practice.

Other Standards and Criteria-

6. **Access to ASTCs.** The majority of the population in a Service Area should reside within 60 minutes average driving time to the facility.

RESPONSE: *The majority of the population in the Service Area in 2018 reside in Loudon and Roane Counties TN-112,108-Total Service Area (over 64%). The proposed facility site is located in Lenoir City, TN-Loudon County and is within the 60 minutes average driving time for all areas within Loudon & Roane Counties. In addition, the proposed facility site is located within the 60 minutes average driving time of every major community within the East Tenn Area as set forth in the Schedule below:*

PROXIMITY OF PROJECT ASTC 5491 CREEKWOOD PARK BLVD- LENOIR CITY, TN-LOUDON COUNTY TO EAST TN COMMUNITIES			Distance - Miles	Drive Time- Minutes
Location-City	County	State		
Friendsville	Blount	TN	14.1	21
Maryville	Blount	TN	22.5	32
Alcoa	Blount	TN	22.3	31
Loudon	Loudon	TN	11.7	18
Philadelphia	Loudon	TN	15.9	17
Athens	McMinn	TN	35.4	37
Decatur	Meigs	TN	43.1	41
Sweetwater	Monroe	TN	22.9	24
Madisonville	Monroe	TN	34.2	37
Oakdale	Morgan	TN	27.7	36
Spring City	Rhea	TN	44.2	49
Kingston	Roane	TN	17.2	19

Source of Information: Google Maps, May 2018

7. **Access to ASTCs.** An applicant should provide information regarding the relationship of an existing or proposed ASTC site to public transportation routes if that information is available.

RESPONSE: *Public transportation services are available to Loudon & Roane County residents through ETHRA Public Transportation which provides public transportation services to residents of all ages in all 16 East Tennessee counties and TennCare Transportation will provide transportation for eligible enrollees to the proposed ASTC site.*

8. **Access to ASTCs.** An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project the origin of potential patients by percentage and county of residence and, if such data are readily available, by zip code, and must note where they are currently being served. Demographics of the Service Area should be included, including the anticipated provision of services to out-of-state patients, as well as the identity of other service providers both in and out of state and the source of out-of-state data. Applicants shall document all other provider alternatives available in the Service Area. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

RESPONSE: *The Applicant has provided and addressed the requested information and documentation including assumptions in other areas and schedules within the application.*

9. **Access and Economic Efficiencies.** An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project patient utilization for each of the first eight quarters following completion of the project. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

RESPONSE: *See Table below. Projected patient utilization is based on actual procedures performed by TEC group for 2017 with increase of 10% cumulative growth (from 2017 to 2019) in Year 1-2019 and 10% annual growth in Year 2-2020. This is conservative based on aging population trends of the Service Area in excess of 16.2% in the 65+ age group and population growth from 2018 to 2022.*

July 24, 2018

4:16 P.M.

# PROCEDURES PROJECTED:	QTR 1	QTR 2	QTR 3	QTR 4	TOTAL	QTR 1	QTR 2	QTR 3	QTR 4	TOTAL
	YEAR 1	YEAR 1	YEAR 1	YEAR 1		YEAR 2	YEAR 2	YEAR 2	YEAR 2	
Cataract Surgery	383	383	383	383	1,532	422	422	421	421	1,686
Glaucoma Surgery	8	8	8	9	33	9	9	9	9	36
Other Eye Care Sx Procedures	2	2	2	2	8	2	2	2	2	8
Yag Laser Procedures	78	78	78	79	313	86	86	87	86	345
Retina Laser Procedures	5	5	5	4	19	6	5	5	5	21
SLT Laser Procedures	16	16	16	15	63	17	17	17	18	69
Total	492	492	492	492	1,968	542	541	541	541	2,165

10. Patient Safety and Quality of Care; Health Care Workforce.

- a. An applicant should be or agree to become accredited by any accrediting organization approved by the Centers for Medicare and Medicaid Services, such as the Joint Commission, the Accreditation Association of Ambulatory Health Care, the American Association for Accreditation of Ambulatory Surgical Facilities, or other nationally recognized accrediting organization.
- b. An applicant should estimate the number of physicians by specialty that are expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel. An applicant should provide documentation on the availability of appropriate and qualified staff that will provide ancillary support services, whether on- or off-site.

RESPONSE: *The Applicant plans to become accredited through the Accreditation Association of Ambulatory Health Care (AAAHC). The Applicant will initially credential and extend surgical privileges to the two physician owners of the proposed ASTC-Dr. Browning & Dr. Lowrance (the TEC group) who will perform the ophthalmic surgery and eye laser procedures in the Facility. The Applicant will consider offering surgical privileges for utilization of the ASTC to other qualified ophthalmic surgeons once the appropriate physician credentialing and admission policies have been established by the organization. CRNA staff has been identified and the Applicant has provided a Letter from the CRNA in the Attachment Section-Contribution to the Orderly Development of Healthcare. There are several accredited nursing programs including UT-Knoxville and other schools within the Knoxville, TN area that can provide an excellent source for recruitment of Registered Nurses and other qualified staff.*

11. Access to ASTCs. In light of Rule 0720-11.01, which lists the factors concerning need on which an application may be evaluated, and Principle No. 2 in the State Health Plan, "Every citizen should have reasonable access to health care," the HSDA may decide to give special consideration to an applicant:

- a. Who is offering the service in a medically underserved area as designated by the United States Health Resources and Services Administration;
- b. Who is a "safety net hospital" or a "children's hospital" as defined by the Bureau of TennCare Essential Access Hospital payment program;

July 24, 2018

4:16 P.M.

c. Who provides a written commitment of intention to contract with at least one TennCare MCO and, if providing adult services, to participate in the Medicare program; or d. Who is proposing to use the ASTC for patients that typically require longer preparation and scanning times. The applicant shall provide in its application information supporting the additional time required per Case and the impact on the need standard. The Division recognizes that not all ASTCs can be CMS certified or accredited.

d. Who is proposing to use the ASTC for patients that typically require longer preparation and scanning times. The applicant shall provide in its application information supporting the additional time required per Case and the impact on the need standard.

RESPONSE: *Not necessary. Applicant meets utilization criteria.*

B. Describe the relationship of this project to the applicant facility's long-range development plans, if any, and how it relates to related previously approved projects of the applicant. **RESPONSE:** *Thomas Browning, MD & Matthew Lowrance DO have ownership in the Eye Surgery Center of Knoxville, LLC located at 7739 Dannaher Drive, Powell, TN 37849, which has begun operations as a licensed & Medicare certified single specialty ophthalmic ASTC in Knox County, TN. The TEC Group practice in Knoxville will support surgical volume for the Knox County ASC and the TEC Harriman & TEC Lenoir City practices will support the proposed ASTC upon completion.*

C. Identify the proposed service area and justify the reasonableness of that proposed area. Submit a county level map for the Tennessee portion of the service area using the map on the following page, clearly marked to reflect the service area as it relates to meeting the requirements for CON criteria and standards that may apply to the project. Please include a discussion of the inclusion of counties in the border states, if applicable.
Attachment Section B- Need-C.

RESPONSE: *See Service Area Maps included in Attachment Section B-Need-C.. The Service Area is justified in that over 64% of patients having surgical procedures performed by the TEC group in 2017 originated from the two counties in Tennessee-Loudon & Roane. No counties in border states are included in the proposed service area. The ASTC proposed site is ideally located in the Loudon County-Lenoir City area to service this market and provide comprehensive quality eye care to a growing and aging population. There are currently no ASTCs licensed in Loudon or Roane County so all of the ophthalmic surgery referred from the TEC practice office locations are currently being performed in the two hospitals in Lenoir City and Harriman and the multi-specialty ASTC in Athens TN-McMinn County.*

Please complete the following tables, if applicable: **RESPONSE:**

See Schedule of the Two County Service Area Utilization Below. Historical Utilization reflects Procedures performed for year end 2017 by the two specialists of the TEC group from the medical clinic records of surgical procedures performed. Applicant anticipates growth in both TEC affiliated practice locations in Loudon & Roane Counties and projects similar patient origin trends for the next several years-64.67%, in Service Area. TEC plans to add additional eye care providers to its TEC medical group practice in order to accommodate the anticipated growth in surgical procedures from the aging population requiring diagnostic and surgical treatment of eye diseases.

EAST TN- COUNTIES SERVED BY TEC PHYSICIANS/SURGEONS	HISTORICAL UTILIZATION-COUNTY RESIDENTS-2017	% OF TOTAL PROCEDURES
LOUDON	491	27.45%
ROANE	666	37.23%
TOTAL PRIMARY SERVICE AREA	1,157	64.67%

McMINN	173	9.67%
BLOUNT	135	7.55%
OTHER < 5.0%	324	18.11%

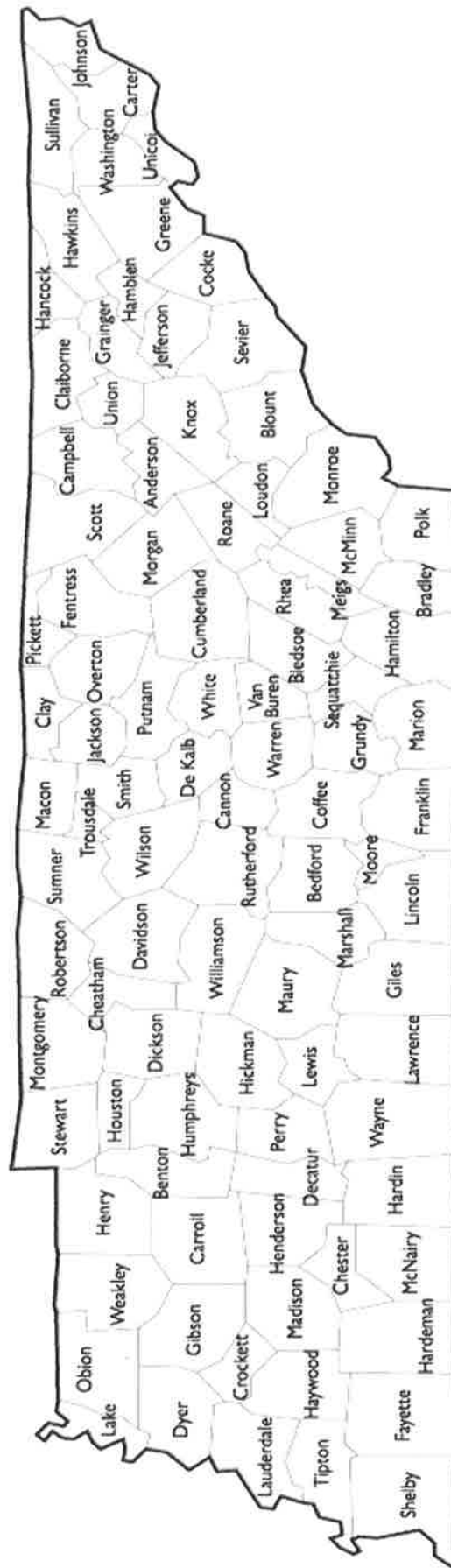
TOTAL	1,789	100.00%
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EAST TN- COUNTIES SERVED BY TEC PHYSICIANS/SURGEONS	PROJECTED UTILIZATION-COUNTY RESIDENTS-YR 1	% OF TOTAL PROCEDURES
LOUDON	540	30.19%
ROANE	733	37.23%
TOTAL PRIMARY SERVICE AREA	1,273	64.67%

McMINN	190	9.67%
BLOUNT	149	7.55%
OTHER < 5.0%	356	18.11%

TOTAL	1,968	100.00%
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County Level Map



D. 1). a) Describe the demographics of the population to be served by **July 24, 2018**

4:16 P.M.

RESPONSE: *The Demographics of the Service Area is summarized in the Table below. The median age is 46.8 yrs. which is older than the TN median age-38.5 yrs. The 65+ age group is expected to increase by 16.2% from 2018 to 2022 which will require more eye care treatment and cataract surgery for age related vision loss in the immediate future and the coming years. This trend is projected to continue beyond 2022. TennCare enrollees within the Service Area total 20,692 representing 18.5% of total TennCare enrollees per Bureau of TennCare April 2018 report.. The total statewide enrollment in TennCare at April 2018 is 1,432,475 which represents 20.6% of the state's population-6,960,524.*

b) Using current and projected population data from the Department of Health, the most recent enrollee data from the Bureau of TennCare, and demographic information from the US Census Bureau, complete the following table and include data for each county in your proposed service area.

Projected Population Data: <http://www.tn.gov/health/article/statistics-population>

TennCare Enrollment Data: <http://www.tn.gov/tenncare/topic/enrollment-data>

Census Bureau Fact Finder: <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>

Demographic Variable/Geographic Area	Department of Health/Health Statistics							Bureau of the Census				TennCare	
	Total Population-Current Year	Total Population-Projected Year	Total Population-% Change	*Target Population-Current Year	*Target Population-Project Year	*Target Population-% Change	Target Population Projected Year as % of Total	Median Age	Median Household Income	Person Below Poverty Level	Person Below Poverty Level as % of Total	TennCare Enrollees	TennCare Enrollees as % of Total
County A													
County B, etc.													
Service Area Total													
State of TN Total													

** Target Population is population that project will primarily serve. For example, nursing home, home health agency, hospice agency projects typically primarily serve the Age 65+ population; projects for child and adolescent psychiatric services will serve the Population Ages 0-19. Projected Year is defined in select service-specific criteria and standards. If Projected Year is not defined, default should be four years from current year, e.g., if Current Year is 2018, then default Projected Year is 2022.*

RESPONSE: *See Demographic Table for Eye Surgery Center of Lenoir City Service Area*

Demographic Table for Eye Surgery Center of Lenoir City Service Area

Demographic Variable/ Geographic Area	Department of Health/Health Statistics*								Bureau of the Census**				TennCare***	
	Population Estimate 2018			Population Estimate 2022			% Increase		Median Age	Median Household Income	# Persons Below Poverty Level	# Persons Below Poverty Level as a % of Total	TennCare Enrollees	TennCare Enrollees as a % of Total
	Total	65+	% 65+	Total	65+	% 65+	65+	Total						
Loudon	56,118	16,504	29.4%	59,673	19,337	32.4%	17.2%	6.3%	47.2	52,995	6,767	12.1%	9,242	16.5%
Roane	55,990	13,505	24.1%	57,022	15,536	27.2%	15.0%	1.8%	46.3	42,299	8,449	15.1%	11,450	20.5%
Service Area Total	112,108	30,009	26.8%	116,695	34,873	29.9%	16.2%	4.1%	46.8	47,647	15,216	13.6%	20,692	18.5%
State of TN Total	6,960,524	1,175,938	16.9%	7,263,893	1,362,320	18.8%	15.8%	4.4%	38.5	46,574	1,100,169	15.8%	1,432,475	20.6%

* 2017 Revised UTCBER Population Projection Series

Source: The University of Tennessee Center for Business and Economic Research Population Projection Data Files,
Reassembled by the Tennessee Department of Health, Division of Policy, Planning and Assessment.

Note: These data will not match the University of Tennessee Data exactly due to rounding.

** Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates

*** Source: TennCare Enrollment Report for April 2018

- 2). Describe the special needs of the service area population, including health disparities, the accessibility to consumers, particularly the elderly, women, racial and ethnic minorities, and low-income groups. Document how the business plans of the facility will take into consideration the special needs of the service area population.

RESPONSE: *The 65+yrs age group is continuing to grow at a significant rate within the Service Area. Accordingly, there is a high prevalence of cataracts, age-related macular degeneration, glaucoma, and other eye diseases which create loss of vision in this age group requiring access to quality care and surgery in a cost effective environment. The proposed Facility can address these needs. Historically, the TEC group physicians have treated patients from all racial, ethnic minorities, and low-income groups without discrimination and have provided a significant amount of indigent care which will continue with the proposed ASTC. The proposed ASTC will participate in all TennCare/ Medicaid programs and Medicare/Medicare Managed programs to address the special needs of these patients.*

July 24, 2018

4:16 P.M.

- E. Describe the existing and approved but unimplemented services of similar healthcare providers in the service area. Include utilization and/or occupancy trends for each of the most recent three years of data available for this type of project. List each provider and its utilization and/or occupancy individually. Inpatient bed projects must include the following data: Admissions or discharges, patient days, average length of stay, and occupancy. Other projects should use the most appropriate measures, e.g., cases, procedures, visits, admissions, etc. This doesn't apply to projects that are solely relocating a service.

RESPONSE: *There are currently no existing ASTCs within the Applicant's Primary Service Area-Loudon & Roane Counties in TN which currently provide eye services. The Hospital outpatient facilities-Ft, Loudon Medical Center in Lenoir City and Roane Medical Center in Harriman are the only facilities providing eye surgery within this service area.and the data is insufficient to make any determination*

- F. Provide applicable utilization and/or occupancy statistics for your institution for each of the past three years and the projected annual utilization for each of the two years following completion of the project. Additionally, provide the details regarding the methodology used to project utilization. The methodology **must include** detailed calculations or documentation from referral sources, and identification of all assumptions.

RESPONSE: *The ophthalmic surgical and eye laser procedure cases performed by the two ophthalmic surgeons representing the TEC medical eye care practice (the "TEC group") for the three-year period 2015 through 2017 by ASTC, Hospital facility, or office facilities (where these were performed) are reflected in the schedule below. Based on this historical utilization by the TEC group the Applicant projects an increase in surgical case volume of 10.0% (cumulative from year ending 2017 to Year 1-2019) and an annual increase of 10.0% in surgical case volume for Year2- 2020. This assumes that the proposed ASTC is approved, licensed, accredited and operational as of June 1, 2019 and the TEC group will perform all of the projected cases for Year 1 and Year 2 in the new ophthalmic ASTC.*

**EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
UTILIZATION-FYE 2015/FYE 2016/FYE 2017**

Supplemental #1

July 24, 2018

4:16 P.M.

ESCLC UTILIZATION- # SURGICAL CASES:

	FYE 2015 Total	FYE 2016 Total	Increase % Cases	FYE 2017 Total	Increase % Cases
Cataract Surgery	984	1,359		1,393	
Glaucoma Surgery	11	34		30	
Other Eye Care Surgery	2	3		7	
Yag Laser Procedures	197	262		285	
Retina Laser Procedures	25	28		17	
SLT Laser Procedures	46	73		57	
Total	1,265	1,759	39.05%	1,789	1.71%

ASTC or Hospital Facility Utilized:

	OR Cases	PR Cases	OR Cases	PR Cases	OR Cases	PR Cases
Ft. Loudon Medical Ctr-Hospital-Lenoir City,TN	412		691		679	-
Roane Medical Ctr.-Harriman,TN	462		555		588	
The Surgery Center of Athens-Athens, TN	123		138		164	
Medical Offices of TEC Group		268		375		358
OR Cases	997		1,384		1,431	
PR Cases		268		375		358
Total-OR+PR	1,265		1,759		1,789	

**EYE SURGERY CENTER OF LENOIR CITY (ESCLC)
UTILIZATION-FYE 2015/FYE 2016/FYE 2017**

ESCLC UTILIZATION- # SURGICAL CASES:

	ACTUAL			PROJECTED	
	FYE 2015	FYE 2016	FYE 2017	YR 1	YR 2
	Total	Total	Total	Total	Total
Cataract Surgery	984	1,359	1,393	1,532	1,686
Glaucoma Surgery	11	34	30	33	36
Other Eye Care Surgery	2	3	7	8	8
Yag Laser Procedures	197	262	285	314	345
Retina Laser Procedures	25	28	17	19	21
SLT Laser Procedures	46	73	57	63	69
Total	1,265	1,759	1,789	1,968	2,165

Growth-% 39.05% 1.71% 10.00% 10.00%

SECTION B: ECONOMIC FEASIBILITY

Supplemental #1

July 24, 2018

4:16 P.M.

- A. Provide the cost of the project by completing the Project Costs Chart on the following page. Justify the cost of the project.
- 1) All projects should have a project cost of at least \$15,000 (the minimum CON Filing Fee). (See Application Instructions for Filing Fee)
 - 2) The cost of any lease (building, land, and/or equipment) should be based on fair market value or the total amount of the lease payments over the initial term of the lease, whichever is greater. Note: This applies to all equipment leases including by procedure or "per click" arrangements. The methodology used to determine the total lease cost for a "per click" arrangement must include, at a minimum, the projected procedures, the "per click" rate and the term of the lease.
 - 3) The cost for fixed and moveable equipment includes, but is not necessarily limited to, maintenance agreements covering the expected useful life of the equipment; federal, state, and local taxes and other government assessments; and installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding, which should be included under construction costs or incorporated in a facility lease.
 - 4) Complete the Square Footage Chart on page 8 and provide the documentation. Please note the Total Construction Cost reported on line 5 of the Project Cost Chart should equal the Total Construction Cost reported on the Square Footage Chart.
 - 5) For projects that include new construction, modification, and/or renovation—**documentation must be** provided from a licensed architect or construction professional that support the estimated construction costs. Provide a letter that includes the following:
 - a) A general description of the project;
 - b) An estimate of the cost to construct the project;
 - c) A description of the status of the site's suitability for the proposed project; and
 - d) Attesting the physical environment will conform to applicable federal standards, manufacturer's specifications and licensing agencies' requirements including the AIA Guidelines for Design and Construction of Hospital and Health Care Facilities in current use by the licensing authority.

RESPONSE:

Project Cost Chart-Item A.line 1.Architectural & Engineering Fees were estimated by Architect.

Project Cost Chart-Item A.line 2 .A contingency amount for Legal, Administrative & Consultant Fees were estimated by Consultant & Attorney representing the Project.

Project Cost Chart-Item A.lines 4-6. Includes cost estimates by Architect for Preparation of Site, Total Construction Costs -3,889 sq. ft facility at \$150/sq. ft =\$583,350.00 in addition to a contingency amount of \$50,000.00 (Total Adjusted Cost with contingency=\$633,350.00) to complete shelled in space. See Attachment B-Economic Feasibility-1 Documentation of Construction Cost Estimate-Licensed Architect Letter.

Project Cost Chart-Item A.line 8. Moveable equipment includes all medical/surgical equipment, office equipment, computer & telecommunication equipment, furniture & fixtures for designated areas within the facility. The two operating rooms will each be equipped with a phaco unit (approx.\$62,000 per unit) and a surgical microscope (approx.\$52,000 per unit). Total cost for equipment was provided based on discussions with vendors and estimate from Consultant (phaco units & surgical microscopes would be only items in excess of \$50,000).

Item 1.A. Based on Instructions-CON Application Fee=\$5.75/\$1000.00 for Project Cost (\$15,000-Minimum) \$15,000.00 is required for CON Application Fee.

Item 1. B. Represents N/A-Not Applicable.

Item 1. C. Addressed in Cost estimate Project Cost Chart-Item A. line 8.

Item 1. D. Square Footage Chart completed. ASTC Construction Cost Per Square Foot for Years 2015-2017

Construction ranges are not available due to insufficient sample size from TN-HSDA. ASTC Construction Cost Per Square Foot for Years 2015-2017 for new construction projects approved by TN-HSDA ranged from \$200.00/sq ft-1st Quartile; \$252.74/sq ft-Median; \$371.75/sq ft-3rd Quartile. Based on this information the project is well within the range for ASTC new construction projects at \$150.00/sq.ft (exclusive of land & site preparation costs) .

Item 1.E. See Attachment B-Economic Feasibility-5 Documentation of Construction Cost Estimate-Licensed Architect Letter.

PROJECT COST CHART

Supplemental #1

July 24, 2018

4:16 P.M.

A. Construction and equipment acquired by purchase:

1.	Architectural and Engineering Fees	\$60,000.00
2.	Legal, Administrative (Excluding CON Filing Fee), Consultant Fees	\$75,000.00
3.	Acquisition of Site	
4.	Preparation of Site	
5.	Total Construction Costs (3,889 sq ft @ \$150.00/sq ft)	\$583,350.00
6.	Contingency Fund	\$50,000.00
7.	Fixed Equipment (Not included in Construction Contract)	
8.	Moveable Equipment (List all equipment over \$50,000 as separate attachments)	\$500,000.00
9.	Other (Specify):	

B. Acquisition by gift, donation, or lease:

1.	Facility (inclusive of building and land) * 10 YR- Initial Term	* \$900,000.00
2.	Building only Lease at \$7,500.00/MO	
3.	Land only	
4.	Equipment (Specify)	
5.	Other (Specify)	

C. Financing Costs and Fees:

1.	Interim Financing	
2.	Underwriting Costs	
3.	Reserve for One Year's Debt Service	
4.	Other (Specify)	

D. Estimated Project Cost
(A+B+C)

\$2,168,350.00

E. CON Filing Fee

\$15,000.00

F. Total Estimated Project Cost

(D+E) Actual Capital Cost Required- \$1,283,350 Plus Section B=

\$2,183,350.00

B. Identify the funding sources for this project.

Check the applicable item(s) below and briefly summarize how the project will be financed. **(Documentation for the type of funding MUST be inserted at the end of the application, in the correct alpha/numeric order and identified as Attachment Section B-Economic Feasibility-B.)**

- ☒ 1). Commercial loan – Letter from lending institution or guarantor stating favorable initial contact, proposed loan amount, expected interest rates, anticipated term of the loan, and any restrictions or conditions;
- ☐ 2). Tax-exempt bonds – Copy of preliminary resolution or a letter from the issuing authority stating favorable initial contact and a conditional agreement from an underwriter or investment banker to proceed with the issuance;
- ☐ 3). General obligation bonds – Copy of resolution from issuing authority or minutes from the appropriate meeting;
- ☐ 4). Grants – Notification of intent form for grant application or notice of grant award;
- ☐ 5). Cash Reserves – Appropriate documentation from Chief Financial Officer of the organization providing the funding for the project and audited financial statements of the organization; and/or
- ☐ 6). Other – Identify and document funding from all other sources.

RESPONSE: *The project's capital renovation construction costs, equipment costs, and organizational costs will be financed through bank loans from First Citizens Bank-Knoxville, Tennessee, totaling \$1,283.350. See letter from lending institution- First Citizens Bank in Attachment Section B-Economic Feasibility-B. The Lease Value in Section B of the Project Chart Cost-\$900,000 represents 10 yr initial term for the renovated ASTC space at \$7,500/Month/\$90,000/Yr*

C. Complete Historical Data Charts on the following two pages—Do not modify the Charts provided or submit Chart substitutions!

Historical Data Chart represents revenue and expense information for the last *three* (3) years for which complete data is available. Provide a Chart for the total facility and Chart just for the services being presented in the proposed project, if applicable. **Only complete one chart if it suffices.**

Note that "Management Fees to Affiliates" should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. "Management Fees to Non-Affiliates" should include any management fees paid by agreement to third party entities not having common ownership with the applicant

RESPONSE: *See Historical Data Chart.*

HISTORICAL DATA CHART

Give information for the last three (3) years for which complete data are available for the facility or agency.

The fiscal year begins in ____January____ (Month).

	Year 2015	Year 2016	Year 2017
A. Utilization Data (Specify unit of measure)	37,296	41,149	44,312
	<i>Patient Encounters</i>	<i>Patient Encounters</i>	<i>Patient Encounters</i>
B. Revenue from Services to Patients			
1 Inpatient Services	\$ -	\$ -	\$ -
2 Outpatient Services	-	-	-
3 Emergency Services	-	-	-
4 Other Operating Revenue (Specify) Patient Services	<u>14,365,322</u>	<u>18,352,323</u>	<u>19,763,287</u>
Gross Operating Revenue	\$ 14,365,322	\$ 18,352,323	\$ 19,763,287
C. Deductions from Gross Operating Revenue			
1 Contractual Adjustments	\$ 6,560,964	\$ 10,020,329	\$ 10,755,809
2 Provision for Charity Care	80,625	123,136	132,174
3 Provisions for Bad Debt	<u>249,456</u>	<u>380,985</u>	<u>408,949</u>
Total Deductions	\$ 6,891,045	\$ 10,524,450	\$ 11,296,932
NET OPERATING REVENUE	\$ 7,474,277	\$ 7,827,873	\$ 8,466,355
D. Operating Expenses			
1 Salaries and Wages			
a. Direct Patient Care	\$ 2,056,412	\$ 2,383,659	\$ 2,337,126
b. Non-Patient Care	-	-	-
2 Physician's Salaries and Wages	2,495,080	2,554,265	2,811,252
3 Supplies	270,998	399,826	461,705
4 Rent			
a. Paid to Affiliates	467,654	391,265	487,253
b. Paid to Non-Affiliates	174,632	236,272	296,412
5 Management Fees:			
a. Paid to Affiliates	-	-	-
b. Paid to Non-Affiliates	-	-	-
6 Other Operating Expenses	<u>1,216,153</u>	<u>1,135,402</u>	<u>1,546,393</u>
Total Operating Expenses	6,680,929	7,100,689	7,940,141
E. Earnings Before Interest, Taxes and Depreciation	\$ 793,348	\$ 727,184	\$ 526,214
F. Non-Operating Expenses			
1 Taxes	206,446	226,752	231,453
2 Depreciation	74,018	171,099	80,648
3 Interest	-	-	-
4 Other Non-Operating Expenses	<u>-</u>	<u>-</u>	<u>-</u>
Total Non-Operating Expenses	\$ 280,464	\$ 397,851	\$ 312,101
NET INCOME (LOSS)	\$ 512,884	\$ 329,333	\$ 214,113

Chart Continues on to Next Page

		Supplemental #1		
NET INCOME (LOSS)		\$ 512,834	July 24, 2018	\$ 214,113
		4:16 P.M.		
G. Other Deductions				
1 Annual Principal Debt Repayment	\$	127,957	\$ 325,404	\$ 150,393
2 Annual Capital Expenditure		28,516	26,782	17,210
Total Other Deductions	\$	156,473	\$ 352,186	\$ 167,603
NET BALANCE	\$	356,411	\$ (22,853)	\$ 46,510
DEPRECIATION		228,648	152,491	139,690
FREE CASH FLOW (Net Balance + Depreciation)	\$	585,059	\$ 129,638	\$ 186,200

Project Only

HISTORICAL DATA CHART-OTHER EXPENSES

<u>OTHER EXPENSES CATEGORIES</u>				
1 Repairs & Maintenance	\$	388,080	\$ 217,400	\$ 196,775
2 Employee Benefit Programs		169,491	211,227	383,090
3 Pension, profit-sharing, etc.plans		-	81,368	103,293
4 Advertising		15,547	18,530	8,402
5 Travel, Meals & Entertainment		61,360	66,020	58,925
6 Legal & Accounting		443	15,624	17,534
7 Professional Services		112,738	13,212	280,555
8 Computer Services		105,802	125,369	93,946
9 Insurance		80,452	56,533	66,023
10 Telephone & Utilities		157,889	137,336	109,551
11 Office Expenses		80,483	131,429	194,543
12 Dues & Subscriptions		35,723	27,315	23,335
13 General & Administrative Expenses-Other		8,145	34,039	10,421
Total Other Expenses	\$	1,216,153	\$ 1,135,402	\$ 1,546,393

D. Complete Projected Data Charts on the following two pages – Do not modify the charts provided or submit Chart substitutions!
4:16 P.M.

The Projected Data Chart requests information for the two years following the completion of the proposed services that apply to the project. Please complete two Projected Data Charts. One Projected Data Chart should reflect revenue and expense projections for the **Proposal Only** (i.e., if the application is for additional beds, include anticipated revenue from the proposed beds only, not from all beds in the facility). The second Chart should reflect information for the total facility. **Only complete one chart if it suffices.**

Note that "Management Fees to Affiliates" should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. "Management Fees to Non-Affiliates" should include any management fees paid by agreement to third party entities not having common ownership with the applicant.

RESPONSE: *See Projected Data Chart.*

PROJECTED DATA CHART

Give information for the two following the completion of this proposal.

The fiscal year begins in June (Month).

	Year 2019	Year 2020
A. Utilization Data (Specify unit of measure)	1,968	2,165
	<i>Surgical Cases</i>	<i>Surgical Cases</i>
B. Revenue from Services to Patients		
1 Inpatient Services	\$ -	\$ -
2 Outpatient Services	-	-
3 Emergency Services	-	-
4 Other Operating Revenue (Specify) ASTC-Facility Fee	3,382,940	3,721,234
Gross Operating Revenue	\$ 3,382,940	\$ 3,721,234
C. Deductions from Gross Operating Revenue		
1 Contractual Adjustments	\$ 1,870,042	\$ 2,057,046
2 Provision for Charity Care	29,219	32,141
3 Provisions for Bad Debt	48,699	53,569
Total Deductions	\$ 1,947,960	\$ 2,142,756
NET OPERATING REVENUE	\$ 1,434,980	\$ 1,578,478
D. Operating Expenses		
1 Salaries and Wages		
a. Direct Patient Care	\$ 181,376	\$ 186,817
b. Non-Patient Care	68,640	70,699
2 Physician's Salaries and Wages	-	-
3 Supplies	389,180	436,660
4 Rent		
a. Paid to Affiliates	90,000	90,000
b. Paid to Non-Affiliates	-	-
5 Management Fees:		
a. Paid to Affiliates	-	-
b. Paid to Non-Affiliates	-	-
6 Other Operating Expenses	314,003	323,423
Total Operating Expenses	\$ 1,043,199	\$ 1,107,600
E. Earnings Before Interest, Taxes and Depreciation	\$ 391,781	\$ 470,878
F. Non-Operating Expenses		
1 Taxes	\$ 10,000	\$ 10,300
2 Depreciation	101,429	101,429
3 Interest	27,161	23,032
4 Other Non-Operating Expenses	-	-
Total Non-Operating Expenses	\$ 138,590	\$ 134,760
NET INCOME (LOSS)	\$ 253,191	\$ 336,118

Chart Continues on to Next Page

July 24, 2018

4:16 P.M.

NET INCOME (LOSS)	\$	253,191	\$	236,118
G. Other Deductions				
1 Annual Principal Debt Repayment	\$	89,650	\$	93,780
2 Annual Capital Expenditure		-		-
Total Other Deductions	\$	89,650	\$	93,780
NET BALANCE	\$	163,540	\$	242,338
DEPRECIATION		101,429		101,429
FREE CASH FLOW (Net Balance + Depreciation)	\$	264,969	\$	343,766

Project Only

PROJECTED DATA CHART-OTHER EXPENSES

OTHER EXPENSES CATEGORIES

1 Repairs & Maintenance	\$	20,000	\$	20,600
2 Employee Benefit Programs		50,003		51,503
3 Pension, profit-sharing, etc.plans		-		-
4 Advertising		2,500		2,575
5 Travel, Meals & Entertainment		2,000		2,060
6 Legal & Accounting		20,000		20,600
7 Professional Services		135,000		139,050
8 Computer Services		24,000		24,720
9 Insurance		20,000		20,600
10 Telephone & Utilities		15,000		15,450
11 Office Expenses		12,000		12,360
12 Dues & Subscriptions		7,500		7,725
13 General & Administrative Expenses-Other		6,000		6,180
Total Other Expenses	\$	314,003	\$	323,423

July 24, 2018

4:16 P.M.

- E. 1). Please identify the project's average gross charge, average deduction from operating revenue, and average net charge using information from the Projected Data Chart for Year 1 and Year 2 of the proposed project. Please complete the following table. **RESPONSE:** See Table below.

	Previous Year	Current Year	Year One	Year Two	% Change (Current Year to Year 2)
Gross Charge (Gross Operating Revenue/Utilization Data)	N/A	N/A	\$1,719.06	\$1,718.81	0.00%
Deduction from Revenue (Total Deductions/Utilization Data)	N/A	N/A	\$989.82	\$989.73	0.00%
Average Net Charge (Net Operating Revenue/Utilization Data)	N/A	N/A	\$729.24	\$729.08	0.00%

- 2). Provide the proposed charges for the project and discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the project and the impact on existing patient charges.

RESPONSE: This is a new project and there are no existing (current) charges to be affected by the implementation of this proposal. The proposed charges for the project are set forth in the following Section C. along with anticipated revenue from the project which is set forth in the Projected Data Chart.

- 3). Compare the proposed charges to those of similar facilities in the service area/adjoining service areas, or to proposed charges of projects recently approved by the Health Services and Development Agency. If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

RESPONSE: The proposed gross charge/case (\$1,719.06- YR 1 & \$1718.81-YR 2) and average net charge/case (\$729.24-YR 1 & \$729.08-YR 2) for the project are lower than the overall average gross charge/case than multi-specialty ASTC rates and considerably lower than Hospital Outpatient Department (HOPD) payment rates for the same procedures under Medicare. Proposed charges have been scheduled in accordance with the project's most frequently performed procedures by CPT code in contrast with the current Medicare allowable fee schedule for the Loudon County, TN CSA -28940 effective as of 1/1/2018, and projected utilization data for YRs 1 & 2. See Schedules below.

**Eye Surgery Center of Lenoir City (ESCLC)-Charge Schedule
Palmetto GBA-CMS Medicare Allowable Reimbursement Rates
for Ambulatory Surgery Centers-Effective 1/1/2018
Most Frequent Procedures to be Performed-ESCLC**

Supplemental #1

July 24, 2018

4:16 P.M.

CPT #	Description	ESCLC Charge YR 1 & YR 2	Medicare Rates Loudon County-TN CSA (28940)*	CPT Group	Projected Utilization	
					YR 1-2019 # Cases	YR 2-2020 # Cases
65855	TRABECULOPLASTY-LASER-1/MORE SESSION	\$ 600.00	\$ 114.52	Laser-SLT	63	69
66761	IRIDOTOMY /IRIDECTOMY BY LASER	\$ 600.00	\$ 164.33	Yag-PI		
66821	YAG CAPSULOTOMY	\$ 600.00	\$ 220.59	Yag-Cap	314	345
66825	REPOSITIONING OF IOL	\$ 2,000.00	\$ 860.81	Cat-Sx		
66852	REMOVAL OF LENS MATERIAL	\$ 2,000.00	\$ 1,509.21	Cat-Sx		
66982	CATARACT SURGERY COMPLEX	\$ 2,000.00	\$ 860.81	Cat-Sx		
66984	EXTRACAPSULAR CATARACT REMOVAL	\$ 2,000.00	\$ 860.81	Cat-Sx	1,532	1,686
66985	SECONDARY IOL	\$ 2,000.00	\$ 860.81	Cat-Sx		
66986	EXCHANGE OF IOL	\$ 2,000.00	\$ 860.81	Cat-Sx		
67031	YAG VITREOLYSIS	\$ 600.00	\$ 220.59	Laser-Ret		
67145	PROPHYLAXIS RET DETACH-PHOTOACOAG	\$ 600.00	\$ 365.42	Laser-Ret	19	21
67210	PHOTOACOAG LASER RETINA LESION	\$ 600.00	\$ 219.09	Laser-Ret		
65420	EXCISION OF PTERYGIUM w/o GRAFT	\$ 2,000.00	\$ 701.59	Oth-Sx		
65426	EXCISION OF PTERYGIUM w/ GRAFT	\$ 2,000.00	\$ 701.59	Oth-Sx	8	8
65930	REMOVAL BLOOD CLOT-ANT. SEGMENT	\$ 2,000.00	\$ 860.81	Oth-Sx		
66172	TRABECULOTOMY AB EXT	\$ 2,000.00	\$ 860.81	Glauc-Sx		
66711	CYCLOPHOTOACOAGULATION, ENDOSCOPIC (ECP)	\$ 2,000.00	\$ 860.81	Glauc-Sx	33	36
					1,968	2,165

*Source -published CMS ASC Fee Schedule-Palmetto-GBA Website.

July 24, 2018

4:16 P.M.

- F. 1). Discuss how projected utilization rates will be sufficient to support the financial performance. Indicate when the project's financial breakeven is expected and demonstrate the availability of sufficient cash flow until financial viability is achieved. Provide copies of the balance sheet and income statement from the most recent reporting period of the institution and the most recent audited financial statements with accompanying notes, if applicable. For all projects, provide financial information for the corporation, partnership, or principal parties that will be a source of funding for the project. Copies must be inserted at the end of the application, in the correct alpha-numeric order and labeled as **Attachment Section B-Economic Feasibility-F1**. **NOTE: Publicly held entities only need to reference their SEC filings.**

RESPONSE: *Projected utilization rates will generate positive cash flow for the project in the first year of operation of \$264,969 and in the second year as well-\$343,766 with net operating margins of 27.30% in Year 1 and 29.83% in Year 2 according to the Projected Data Chart. The projected utilization reflects competitive charge rates (significantly less than HOPDs) and Medicare allowable reimbursement rates for cataract surgery are approx. 53% less than HOPD reimbursements. -\$1745 /cs HOPD-\$976/cs-ASC. The project is expected to provide sufficient cash flow and be financially viable once operations are initiated.*

See Financial Statements & other financial information included in Attachment Section B-Economic Feasibility-F1.

- 2). **Net Operating Margin Ratio – Demonstrates how much revenue is left over after all the variable or operating costs have been paid. The formula for this ratio is: (Earnings before interest, Taxes, and Depreciation/Net Operating Revenue).**

Utilizing information from the Historical and Projected Data Charts please report the net operating margin ratio trends in the following table:

RESPONSE: *The Historical Data Chart represents summarized financial information from the Eye Care Centers, PLLC dba Tennessee Eye Care, the private eye care medical practice that is owned by Drs. Browning & Lowrance and three optometrists("TEC"). In addition to the provider owners, the TEC also currently employs one Board Certified ophthalmologist and four optometrists. Drs. Browning & Lowrance are the participating member-owners of the Applicant and the Historical Data Chart is provided for information purposes. Net Operating Margin Ratio is Not Applicable-N/A for the Historical Data Chart.*

The Net Operating Margin Ratio Trends are positive.:

Year	2nd Year previous to Current Year	1st Year previous to Current Year	Current Year	Projected Year 1	Projected Year 2
Net Operating Margin Ratio	N/A	N/A	N/A	27.30%	29.83%

3. Capitalization Ratio (Long-term debt to capitalization) – Measures the proportion of debt financing in a business's permanent (Long-term) financing mix. This ratio best measures a business's true capital structure because it is not affected by short-term financing decisions. The formula for this ratio is: (Long-term debt/Total Equity (Net assets)) x 100).

For the entity (applicant and/or parent company) that is funding the proposed project please provide the capitalization ratio using the most recent year available from the funding entity's audited balance sheet, if applicable. The Capitalization Ratios are not expected from outside the company lenders that provide funding.

RESPONSE: *Not Applicable-NA. The Applicant is a newly established entity. Bank financing from commercial bank will fund the entire initial capital, equipment & working capital costs for the project.*

- G. Discuss the project's participation in state and federal revenue programs including a description of the extent to which Medicare, TennCare/Medicaid and medically indigent patients will be served by the project. Additionally, report the estimated gross operating revenue dollar amount and percentage of projected gross operating revenue anticipated by payor classification for the first year of the project by completing the table below.

RESPONSE: *Applicant will fully participate in all Medicare, TennCare/Medicaid programs and will serve medically indigent patients. Applicant currently anticipates Projected Gross Operating Revenue of 61.31% from Medicare/Medicare Managed Care patients and 6.25% from TennCare/Medicaid patients as a % of the Total Project in Year 1. See Table Below*

Applicant's Projected Payor Mix, Year 1

Payor Source	Projected Gross Operating Revenue	As a % of total
Medicare/Medicare Managed Care	\$2,074,080	61.31%
TennCare/Medicaid	\$211,434	6.25%
Commercial/Other Managed Care	\$831,865	24.59%
Self-Pay	\$231,055	6.83%
Charity Care	\$34,506	1.02%
Other (Specify) _____		
Total	\$3,382,940	100.00%

- H. Provide the projected staffing for the project in Year 1 and compare to the current staffing for the most recent 12-month period, as appropriate. This can be reported using full-time equivalent (FTEs) positions for these positions. Additionally, please identify projected salary amounts by position classifications and compare the clinical staff salaries to prevailing wage patterns in the proposed service area as published by the Department of Labor & Workforce Development and/or other documented sources.

RESPONSE: *See Schedules below.*

Eye Surgery Center of Lenoir City

STAFFING ANALYSIS & PLAN

PERSONNEL:	STATUS	FTE	ESCLC HRLY RATE	HRS/ DAY	DAYS/ WK	WKS/ YR	HRS/ YR	PROJECTED COST	
								YR 1	YR 2
RN-Admin & Circulator	FTE	1.00	\$ 32.00	8	5.00	52	2,080	\$ 66,560.00	\$ 68,556.80
RN/Pre-Op/Infection Control	Shared-PT	0.60	\$ 28.00	8	3.00	52	1,248	\$ 34,944.00	\$ 35,992.32
RN/PACU	Shared-PT	0.60	\$ 28.00	8	3.00	52	1,248	\$ 34,944.00	\$ 35,992.32
Surgical Scrub Tech	Shared-PT	0.60	\$ 18.00	8	3.00	52	1,248	\$ 22,464.00	\$ 23,137.92
Surgical Scrub Tech	Shared-PT	0.60	\$ 18.00	8	3.00	52	1,248	\$ 22,464.00	\$ 23,137.92
Direct Patient Care-FTE		3.40					7,072	\$ 181,376.00	\$ 186,817.28
Registration & Medical Records	FTE	1.00	\$ 15.00	8	5.00	52	2,080	\$ 31,200.00	\$ 32,136.00
Billing & Insurance-Administration	FTE	1.00	\$ 18.00	8	5.00	52	2,080	\$ 37,440.00	\$ 38,563.20
Non-Patient Care-FTE	-	2.00					4,160	\$ 68,640.00	\$ 70,699.20
Total FTE Equivalents	-	5.40						\$ 250,016.00	\$ 257,516.48
Staffing Taxes & Benefit Cost @ 20%								\$ 50,003.20	\$ 51,503.30
*Projected Increase in Wages @ 3%/YR								TOTAL	\$ 300,019.20 \$ 309,019.78

Schedule of Proposed Compensation by Job Discipline

Eye Surgery Center of Lenoir City

			Source: TN Dept of Labor & Workforce Dev. Div Emp. Sec. LMI-Knoxville MSA 2017		
PERSONNEL/Job Discipline:	STATUS	ESCLC HRLY RATE	Entry Level HRLY RATE	Median HRLY RATE	Experienced HRLY RATE
RN-Admin & Circulator	FTE	\$ 32.00	\$ 20.74	\$ 26.10	\$ 28.80
RN/Pre-Op/Infection Control	Shared-PT	\$ 28.00	\$ 20.74	\$ 26.10	\$ 28.80
RN/PACU	Shared-PT	\$ 28.00	\$ 20.55	\$ 26.10	\$ 28.80
Surgical Scrub Tech	Shared-PT	\$ 18.00	\$ 15.29	\$ 18.52	\$ 20.20
Surgical Scrub Tech	Shared-PT	\$ 18.00	\$ 15.29	\$ 18.52	\$ 20.20
Registration & Medical Records	FTE	\$ 15.00	\$ 11.27	\$ 13.79	\$ 15.95
Billing & Insurance-Administration	FTE	\$ 18.00	\$ 12.23	\$ 14.88	\$ 16.95

- I. Describe all alternatives to this project which were considered and discuss the advantages and disadvantages of each alternative including but not limited to:

- 1) Discuss the availability of less costly, more effective and/or more efficient alternative methods of providing the benefits intended by the proposal. If development of such alternatives is not practicable, justify why not, including reasons as to why they were rejected.
- 2) Document that consideration has been given to alternatives to new construction, e.g., modernization or sharing arrangements.

RESPONSE: *The Applicant considered alternatives of renovating an existing building in another area of Loudon County but determined that a newly-constructed facility for their Lenoir City-Tennessee Eye Care clinic designed to address the long term comprehensive eye care needs and convenience for their patients requiring surgery was the best alternative. The ASTC site location in Lenoir City housed within the same building as the TEC practice provides efficiency and the best accessibility and convenience to the physicians and their patients. This Facility will allow the physicians to maximize their productivity in a quality cost-effective environment which can be constructed for a realizable cost. The Applicant believes this specialized ophthalmic ASTC will provide more long-term value to the patients and the physicians. There are no existing ophthalmic ASTCs or hospital facilities within the service area that can accommodate the total needs of the physicians and their patients. Applicant acknowledges that the Tennessee Eye Care of Lenoir City-clinic and the proposed ASTC will operate as separate entities and comply with CMS-Medicare guidelines and regulations with respect to separation of patient care.*

SECTION B: CONTRIBUTION TO THE ORDERLY DEVELOPMENT OF HEALTH CARE

- A. List all existing health care providers (i.e., hospitals, nursing homes, home care organizations, etc.), managed care organizations, alliances, and/or networks with which the applicant currently has or plans to have contractual and/or working relationships, that may directly or indirectly apply to the project, such as, transfer agreements, contractual agreements for health services.

RESPONSE: *The Applicant will seek a patient transfer agreement with the Covenant Health Hospital system with which the physicians currently have admitting privileges. This will include the Fort Loudoun Medical Center Hospital located at 550 Fort Loudoun Medical Center Dr, Lenoir City, TN 37772, which is approx. 1.3 miles and 3 minutes driving time from the proposed ASTC project site on Creekwood Park Blvd in Lenoir City, TN.*

- B. Describe the effects of competition and/or duplication of the proposal on the health care system, including the impact to consumers and existing providers in the service area. Discuss any instances of competition and/or duplication arising from your proposal including a description of the effect the proposal will have on the utilization rates of existing providers in the service area of the project.

RESPONSE:

- 1) **Positive Effects-** *The proposed project will not adversely affect the existing facilities currently providing eye care surgical services and will greatly enhance accessibility for the patients of the four medical practices. This will contribute to the optimization of quality surgical care and outcomes for the elderly population within the Applicant's Service Area. The Service Area needs additional surgical capacity for ophthalmic surgical cases which this project can provide. There are no existing ophthalmic ASTCs or multi-specialty ASTCs performing eye cases in the primary service area. The addition of the proposed facility will have a positive effect in addressing the growing eye care needs of the aging population and allow the TEC group physicians to maximize their productivity.*
- 2) **Negative Effects** *No negative effects will be realized from the approval of this proposed Facility.*

- C. 1) Discuss the availability of and accessibility to human resources required by the proposal, including clinical leadership and adequate professional staff, as per the State of Tennessee

July 24, 2018

4:16 P.M.

RESPONSE: *The Applicant has strong medical leadership through its experienced Board Certified physicians and they have developed long-standing relationships within the East Tennessee medical community. The Applicant should have no problem obtaining adequate professional staff. There is also existing, experienced professional staff that will be available through the TEC medical eye care practice.*

Available Professional Anesthesia staff has been identified. See Letter from CRNA in Attachment-Section B Contribution to the Orderly Development of Healthcare Clinical Leadership and Human Resources.

The CVs for the physician owners of the medical practices have been included in this Attachment Section as well.

The Applicant has identified Healthcare Consultant, Stephen H. Rudolph, CPA-Eyecare Resources, LLC to assist the Medical Staff and Professional Staff with the licensing and accreditation process-Background information has been included in this Attachment Section B- Contribution to the Orderly Development of Healthcare Clinical Leadership and Human Resources.

2) Verify that the applicant has reviewed and understands all licensing and/or certification as required by the State of Tennessee and/or accrediting agencies such as the Joint Commission for medical/clinical staff. These include, without limitation, regulations concerning clinical leadership, physician supervision, quality assurance policies and programs, utilization review policies and programs, record keeping, clinical staffing requirements, and staff education.

RESPONSE: *The Applicant so verifies.*

3) Discuss the applicant's participation in the training of students in the areas of medicine, nursing, social work, etc. (e.g., internships, residencies, etc.).

RESPONSE: *The Applicant does not anticipate training of students (internships and residency programs) due to the limited size and design of the Facility.*

D. Identify the type of licensure and certification requirements applicable and verify the applicant has reviewed and understands them. Discuss any additional requirements, if applicable. Provide the name of the entity from which the applicant has received or will receive licensure, certification, and/or accreditation.

RESPONSE: *The Applicant verifies that it has reviewed and understands the requirements for establishing a new Single Specialty- Ambulatory Surgical Treatment Center (ASTC) limited to ophthalmic procedures and will seek licensure from the Board for Licensing Healthcare Facilities-Tennessee Department of Health, certification for participation in Medicare and Medicaid/TennCare programs, and accreditation from the American Association for Ambulatory Healthcare(AAAHC).The Applicant will apply for the following:*

Licensure: Board for Licensing Healthcare Facilities-Tennessee Department of Health for Single Specialty- Ambulatory Surgical Treatment Center (ASTC) limited to ophthalmic procedures

Certification Type (e.g. Medicare SNF, Medicare LTAC,etc):

Medicare Certification from CMS and TennCare Certification from

TDH as Ambulatory Surgery Center limited to Ophthalmology

(Single Specialty)

Accreditation (i.e., Joint Commission, CARF, etc.): American Association for Ambulatory Healthcare.

1) If an existing institution, describe the current standing with any licensing, certifying, or accrediting agency. Provide a copy of the current license of the facility and accreditation designation.

RESPONSE: *Not Applicable (NA)*

2) For existing providers, please provide a copy of the most recent statement of deficiencies/plan of correction and document that all deficiencies/findings have been corrected by providing a letter from the appropriate agency. **RESPONSE:** *Not Applicable (NA)*

3) Document and explain inspections within the last three survey cycles which have resulted in any of the following state, federal, or accrediting body actions: suspension of admissions, civil monetary penalties, notice of 23-day or 90-day termination proceedings from Medicare/Medicaid/TennCare, revocation/denial of accreditation, or other similar actions.

RESPONSE: *Not Applicable (NA)*

a) Discuss what measures the applicant has or will put in place to avoid similar findings in the future. **RESPONSE:** *Not Applicable (NA)*

E. Respond to all of the following and for such occurrences, identify, explain and provide documentation:

1) Has any of the following:

- a) Any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant);
- b) Any entity in which any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest of more than 5%; and/or
- c) Any physician or other provider of health care, or administrator employed by any entity in which any person(s) or entity with more than 5% ownership in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest of more than 5%.

2) Been subjected to any of the following:

a) Final Order or Judgment in a state licensure action; **RESPONSE:** *Yes. See Attachment-Section B. Contribution to Orderly Development which includes Practitioner Profile Data, Licensure Verification & Agreed Citation from State of Tennessee Department of Health-Bureau of Health Licensure and Regulation for Thomas Browning, MD related to insufficient continuing education credits maintained in 2008. The terms of the Agreed Citation regarding insufficient continuing education credits and additional required continuing education credits were subsequently met along with payment of the assessed civil penalty of \$480.*

b) Criminal fines in cases involving a Federal or State health care offense;
RESPONSE: *No*

c) Civil monetary penalties in cases involving a Federal or State health care offense;

RESPONSE: Yes- See response in Section E- 2)a).above.

d) Administrative monetary penalties in cases involving a Federal or State health care offense; **RESPONSE:** No

e) Agreement to pay civil or administrative monetary penalties to the federal government or any state in cases involving claims related to the provision of health care items and services; and/or **RESPONSE:** No

f) Suspension or termination of participation in Medicare or Medicaid/TennCare programs. **RESPONSE:** No

g) Is presently subject of/to an investigation, regulatory action, or party in any civil or criminal action of which you are aware. **RESPONSE:** No

h) Is presently subject to a corporate integrity agreement. **RESPONSE:** No

F. Outstanding Projects: **RESPONSE:** Thomas Browning, MD & Matthew Lowrance DO have ownership in the Eye Surgery Center of Knoxville ,LLC located at 7739 Dannaheer Drive, Powell, TN 37849.which has begun operations as a licensed & Medicare certified single specialty ophthalmic ASTC in Knox County, TN.

1) Complete the following chart by entering information for each applicable outstanding CON by applicant or share common ownership; and

<u>Outstanding Projects</u>					
<u>CON Number</u>	<u>Project Name</u>	<u>Date Approved</u>	<u>*Annual Progress Report(s)</u>		<u>Expiration Date</u>
			<u>Due Date</u>	<u>Date Filed</u>	
CN1611—038A	Eye Surgery Center of Knoxville, LLC	2-22-2017	7-13-2018	7-13-2018	4-1-2019
	7739 Dannaheer Drive				
	Powell, TN 37849 (Knox Cty)				

* Annual Progress Reports – HSDA Rules require that an Annual Progress Report (APR) be submitted each year. The APR is due annually until the Final Project Report (FPR) is submitted (FPR is due within 90 ninety days of the completion and/or implementation of the project). Brief progress status updates are requested as needed. The project remains outstanding until the FPR is received.

2) Provide a brief description of the current progress, and status of each applicable outstanding

July 24, 2018

4:16 P.M.

CON. **RESPONSE:** *Final Cost Report has been filed for Eye Surgery Center of Knoxville, LLC -CON#. State of TN-Office of Healthcare Facilities initially approved the facility and issued Licensure #232 as single specialty Ophthalmic ASTC. Permanent licensure was approved and ratified by the State of TN Licensing Board at their June 7th & 8th meetings. The CMS-Medicare initial certification survey was completed and Medicare Certification for the ASTC was received on May 4, 2018-ASC Medicare ID# 44C0001194 (with no deficiencies)*

G. Equipment Registry – For the applicant and all entities in common ownership with the applicant.

- A. Do you own, lease, operate, and/or contract with a mobile vendor for a Computed Tomography scanner (CT), Linear Accelerator, Magnetic Resonance Imaging (MRI), and/or Positron Emission Tomographer (PET)? No-Not Applicable (NA)
- B. If yes, have you submitted their registration to HSDA? If you have, what was the date of submission? Not Applicable (NA)
- C. If yes, have you submitted your utilization to Health Services and Development Agency? If you have, what was the date of submission? Not Applicable (NA)

SECTION B: QUALITY MEASURES

Please verify that the applicant will report annually using forms prescribed by the Agency concerning continued need and appropriate quality measures as determined by the Agency pertaining to the certificate of need, if approved.

RESPONSE: *The Applicant so verifies.*

Please verify and acknowledge the applicant will be evaluated annually on whether the proposal will provide health care that meets appropriate quality standards upon the following factors:

- (a) Whether the applicant commits to maintaining an actual payor mix that is comparable to the payor mix projected in its CON application, particularly as it relates to Medicare, TennCare/Medicaid, Charity Care, and the Medically Indigent;
RESPONSE: *The Applicant so verifies & commits.*
- (b) Whether the applicant commits to maintaining staffing comparable to the staffing chart presented in its CON application;
RESPONSE: *The Applicant so verifies & commits.*
- (c) Whether the applicant will obtain and maintain all applicable state licenses in good standing;
RESPONSE: *The Applicant so verifies & commits.*
- (d) Whether the applicant will obtain and maintain TennCare and Medicare certification(s), if participation in such programs was indicated in the application;
RESPONSE: *The Applicant so verifies & commits.*
- (e) Whether an existing healthcare institution applying for a CON has maintained substantial compliance with applicable federal and state regulation for the three years prior to the CON application. In the event of non-compliance, the nature of non-compliance and corrective action shall be considered;
RESPONSE: *The Applicant is a newly established entity. Not Applicable N/A.*

- (f) Whether an existing health care institution applying for a CON has been decertified within the prior three years. This provision shall not apply if a new, unrelated owner applies for a CON related to a previously decertified facility;

RESPONSE: *The Applicant is a newly established entity. Not Applicable N/A.*

- (g) Whether the applicant will participate, within 2 years of implementation of the project, in self-assessment and external peer assessment processes used by health care organizations to accurately assess their level of performance in relation to established standards and to implement ways to continuously improve.

RESPONSE: *The Applicant so verifies & commits to participate.*

1. This may include accreditation by any organization approved by Centers for Medicare and Medicaid Services (CMS) and other nationally recognized programs. The Joint Commission or its successor, for example, would be acceptable if applicable. Other acceptable accrediting organizations may include, but are not limited to, the following:

2. Accreditation Association for Ambulatory Health Care, and where applicable, American Association for Accreditation of Ambulatory Surgical Facilities, for Ambulatory Surgical Treatment Center projects.

RESPONSE: *The Applicant so verifies & commits to participate and intends to apply for Accreditation Association for Ambulatory Health Care (AAAHC) as a single specialty ophthalmic ASTC.*

For Ambulatory Surgical Treatment Center projects, whether the applicant has estimated the number of physicians by specialty expected to utilize the facility, developed criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel, and documented the availability of appropriate and qualified staff that will provide ancillary support services, whether on- or off-site.

RESPONSE: *The Applicant has two Board Certified ophthalmologists -Thomas Browning, MD & Matthew Lowrance, DO that will utilize the facility (single specialty ophthalmic ASTC) and has identified anesthesia personnel and other qualified ancillary support services/personnel for the ASTC operations.*

Please verify that the applicant will report annually using forms prescribed by the Agency concerning continued need and appropriate quality measures as determined by the Agency pertaining to the certificate of need, if approved.

RESPONSE: *The Applicant so verifies.*

SECTION C: STATE HEALTH PLAN QUESTIONS

T.C.A. §68-11-1625 requires the Tennessee Department of Health's Division of Health Planning to develop and annually update the State Health Plan (found at <http://www.tn.gov/health/topic/health-planning>). The State Health Plan guides the State in the development of health care programs and policies and in the allocation of health care resources in the State, including the Certificate of Need program. The 5 Principles for Achieving Better Health are from the State Health Plan's framework and inform the Certificate of Need program and its standards and criteria.

Discuss how the proposed project will relate to the 5 Principles for Achieving Better Health found in the State Health Plan.

A. The purpose of the State Health Plan is to improve the health of the people of Tennessee.

RESPONSE: *The approval of this proposed facility by HSDA is consistent with State Health Plan to improve healthcare by providing a cost- effective quality care environment to address the significant increases in age-related eye diseases for the aging population*

B. People in Tennessee should have access to health care and the conditions to achieve optimal health.

RESPONSE: *This project will provide better accessibility for the increasing elderly 65+ yrs. patient population in the Loudon and Roane County primary service area. The need for age-related eye surgery continues to rise and the proposed facility will significantly improve the efficiency of the two ophthalmic specialists, maximize their productivity, and increase overall accessibility of quality care to the service area. There are currently no existing eye specialty or multi-specialty ASTCs providing eye services within the primary service area. The Hospital Outpatient/Inpatient facilities currently utilized by the specialists are not cost-effective, accessibility is limited and additional ASTC surgical capacity is necessary to address the need.*

C. Health resources in Tennessee, including health care, should be developed to address the health of people in Tennessee while encouraging economic efficiencies.

RESPONSE: *With anticipated shortages in ophthalmic providers in the near term, it is critical to enable surgical efficiencies through specialized facilities that can address increasing patient volumes in a cost-effective environment. This project is cost effective and would provide a valuable resource for both the physicians and the patients they serve in the Loudon & Roane County-Tennessee service area.*

D.. People in Tennessee should have confidence that the quality of health care is continually monitored and standards are adhered to by providers.

RESPONSE: *The TEC medical eye care practice and the specialists participating in this project are well established in the East Tennessee area. The TEC practice has been providing quality eye care and surgery for 30+ years. The two ophthalmic surgeons are both Board-certified and both physicians are fellowship trained as subspecialists in medical retina. The Applicant's group is committed to excellence and will seek accreditation from Accreditation Association of Ambulatory Health Care (AAAHC) and will maintain the highest degree in standard of care for the patients they serve within the Facility.*

E. The state should support the development, recruitment, and retention of a sufficient and quality health workforce.

RESPONSE: *The Facility will not have any major effect on the health workforce other than to improve the efficiencies and provide an additional cost effective environment through which the work force participates.*

PROOF OF PUBLICATION

Attach the full page of the newspaper in which the notice of intent appeared with the mast and dateline intact or submit a publication affidavit from the newspaper that includes a copy of the publication as proof of the publication of the letter of intent.

RESPONSE: *See Publication Affidavit from Knoxville News Sentinel with copy of the publication as Proof of the Publication of the letter of intent-Attachment.*

NOTIFICATION REQUIREMENTS

(Applies only to Nonresidential Substitution-Based Treatment Centers for Opiate Addiction)

Note that T.C.A. §68-11-1607(c)(9)(A) states that "...Within ten (10) days of the filing of an application for a nonresidential substitution-based treatment center for opiate addiction with the agency, the applicant shall send a notice to the county mayor of the county in which the facility is proposed to be located, the state representative and senator representing the house district and senate district in which the facility is proposed to be located, and to the mayor of the municipality, if the facility is proposed to be located within the corporate boundaries of a municipality, by certified mail, return receipt requested, informing such officials that an application for a nonresidential substitution-based treatment center for opiate addiction has been filed with the agency by the applicant."

Failure to provide the notifications described above within the required statutory timeframe will result in the voiding of the CON application.

Please provide documentation of these notifications. **RESPONSE:** *Not Applicable-N/A*

DEVELOPMENT SCHEDULE

T.C.A. §68-11-1609(c) provides that a Certificate of Need is valid for a period not to exceed three (3) years (for hospital projects) or two (2) years (for all other projects) from the date of its issuance and after such time shall expire; provided, that the Agency may, in granting the Certificate of Need, allow longer periods of validity for Certificates of Need for good cause shown. Subsequent to granting the Certificate of Need, the Agency may extend a Certificate of Need for a period upon application and good cause shown, accompanied by a non-refundable reasonable filing fee, as prescribed by rule. A Certificate of Need which has been extended shall expire at the end of the extended time period. The decision whether to grant such an extension is within the sole discretion of the Agency, and is not subject to review, reconsideration, or appeal.

1. Complete the Project Completion Forecast Chart on the next page. If the project will be completed in multiple phases, please identify the anticipated completion date for each phase.

RESPONSE: *See Project Completion Forecast Chart on the next page.*

2. If the response to the preceding question indicates that the applicant does not anticipate completing the project within the period of validity as defined in the preceding paragraph, please state below any request for an extended schedule and document the "good cause" for such an extension. **RESPONSE:** *Not Applicable-N/A. The Applicant anticipates completing the project within the period of validity.*

July 24, 2018

PROJECT COMPLETION FORECAST CHART

Assuming the Certificate of Need (CON) approval becomes the final HSDA action on the date listed in Item 1. below, indicate the number of days from the HSDA decision date to each phase of the completion forecast.

Phase	Days Required	Anticipated Date [Month/Year]
1. Initial HSDA decision date		Oct-2018
2. Architectural and engineering contract signed	5	Oct-2018
3. Construction documents approved by the Tennessee Department of Health	75	Jan-2019
4. Construction contract signed	80	Jan-2019
5. Building permit secured	85	Jan-2019
6. Site preparation completed	85	Jan-2019
7. Building construction commenced	86	Jan-2019
8. Construction 40% complete	116	Feb-2019
9. Construction 80% complete	146	Mar-2019
10. Construction 100% complete (approved for occupancy)	173	Apr-2019
11. *Issuance of License	203	May-2019
12. *Issuance of Service	223	June-2019
13. Final Architectural Certification of Payment	253	July-2019
14. Final Project Report Form submitted (Form HR0055)	313	Sep-2019

*For projects that **DO NOT** involve construction or renovation, complete Items 11 & 12 only.

NOTE: If litigation occurs, the completion forecast will be adjusted at the time of the final determination to reflect the actual issue date

APPENDIX

Letter of Intent

Notification of Intent Publication

Miscellaneous

Attachment Section A-4A

Ownership-Legal Entity

Attachment Section A-6A

Site Control-Deed of Trust & Option to Lease

Attachment Section 6B-1,a-d

Plot Plan

Attachment Section 6B-2

Floor Plan

Attachment Section 6B-3

Accessibility of Project Site

Attachment Section B-Need-C

Service Area

**Attachment Section B-Economic
Feasibility-5**

**Documentation of Construction Cost
Estimate**

**Attachment Section B-Economic
Feasibility-F1**

Financial Statements

**Attachment Section B-Economic
Feasibility**

**Documentation of Funding Resources for
Project**

**Attachment Section B-Contribution to
Orderly Development of Healthcare**

**Clinical Leadership & Human Resources
for Project**

Supplemental #2 (Original)

Eye Surgery Center of
Lenoir City

CN1807-033

July 26, 2018

Mark A. Farber-Deputy Director
State of Tennessee
Health Services and Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, TN 37243
www.tn.gov/hsda Phone: 615-741-2364/Fax: 615-741-9884

RE: Certificate of Need Application CN1807-033
Eye Surgery Center of Lenoir City
Supplemental Information Request #2 & Affidavit

Dear Mr. Farber:

Pursuant to your letter of July 25, 2018, please find our response to the list of questions and request for supplemental information (with Affidavit) with regard to the CON application referenced above. Should you have any questions or require additional information please do not hesitate to contact me.

Kindest regards,



Stephen H. Rudolph, CPA-Consultant for

Eye Surgery Center of Lenoir City

PH# 901-219-0173

Email: shrudolphsr@yahoo.com



State of Tennessee
Health Services and Development Agency
Andrew Jackson Building, 9th Floor
www.tn.gov/hsda Phone: 615-741-2364/Fax: 615-741-9884

~~Additional~~

SUPPLEMENTAL

July 26, 2018

Stephen H. Rudolph, CPA
Eyecare Resources, LLC
448 N. Cedar Bluff Road, Suite 255
Knoxville, TN 37923-3612

RE: Certificate of Need Application CN1807-033
Eye Surgery Center of Lenoir City

Dear Mr. Rudolph:

This will acknowledge our July 24, 2018 receipt of supplemental information to your application for a Certificate of Need for the establishment of a single specialty ambulatory surgical treatment center (ASTC) with two operating rooms to be located at 5491 Creekwood Park Boulevard Lenoir City (Loudon County), TN. The ASTC will be limited to ophthalmology.

Several items were found which need clarification or additional discussion. Please review the list of questions below and address them as indicated. The questions have been keyed to the application form for your convenience. I should emphasize that an application cannot be deemed complete and the review cycle begun until all questions have been answered and furnished to this office.

Please submit responses in triplicate by 12:00 noon, Monday, July 30, 2018. If the supplemental information requested in this letter is not submitted by or before this time, then consideration of this application may be delayed into a later review cycle.

1. Section A, Executive Summary B. 1) Need.

Your response to this item is noted. Please complete the following chart:
RESPONSE: *See Chart below.*

2017 Service Area ASTC Utilization

ASTC	# ORs	# OR Cases	# Cases per OR	% of meeting 884 Minimum		# PRs	# PR Cases	# Cases per PR	% of Meeting 1,867 Minimum	Total Cases from *SA	*SA Cases as a % of Total
Eye SC of Oak Ridge	2	2,853	1,427	161.43%		1	997	997	53.40%	389	10.10%
Knoxville Eye SC	4	9,635	2,409	272.51%		1	1,025	1,025	54.90%	519	4.87%
Eye SC of East TN	2	3,605	1,803	203.96%		1	1,004	1,004	53.78%	391	8.48%
S.E. Eye SC	1	3,275	3,275	370.48%		1	332	332	17.78%	170	4.72%
Grand Total/Average	9	19368	2,152	243.44%		4	3,358	840	44.99%	1,469	6.46%

Source: ASTC JAR

*SA=Residents of Roane and Loudon County

2. Section B, Need, A. (Specific Criteria -ASTC) Item 5.

You have reported 17,015 outpatient cases for Ft. Loudon Medical Center and 17,343 outpatient cases for Roane Medical Center. According to page 17 of the 2016 JARs for these hospitals, Roane Medical Center reported 1,189 outpatient surgical cases and Ft. Loudon Medical Center reported 1,576 outpatient surgical cases.

Please address this discrepancy.

RESPONSE: *The previous outpatient cases reported represented the total outpatient procedures/encounters for all areas/depts- within these hospitals (including the surgical department). Both of these hospitals utilize their dedicated inpatient/outpatient rooms and/or dedicated procedure rooms on a shared basis and separate for billing purposes the inpatient vs. outpatient cases performed without providing a breakdown by specialty of the cases performed. Ft. Loudon Medical Center (FLMC) does not indicate the specialty services being provided in the 2016 JAR and Roane Medical Center (RMC) does not provide a breakdown by the specialty services it identifies as being provided. Based on the information presented in the 2016 JARs- FTMC reported 1,961 cases (385 inpatient/1,576 outpatient). TEC performed 691 cases representing 35.2% of LTMC total caseload (43.85% outpatient caseload). RMC reported 1,506 cases (317 inpatient/1,189 outpatient). TEC performed 555 cases representing 36.85% of the RMC total caseload (46.68% outpatient caseload). This assumes all of the specialty services performing surgical cases are included as cases in their shared operating rooms/procedure rooms data per 2016 JARs.*

In accordance with Tennessee Code Annotated, §68-11-1607(c) (5), "...If an application is not deemed complete within sixty (60) days after written notification is given to the applicant by the agency staff that the application is deemed incomplete, the application shall be deemed void." For this application the sixtieth (60th) day after written notification is September 17, 2018. If this application is not deemed complete by this date, the application will be deemed void. Agency Rule 0720-10-.03(4) (d) (2) indicates that "Failure of the applicant to meet this deadline will result in the application being

July 26, 2018

10:48 A.M.

considered withdrawn and returned to the contact person. Re-submittal of the application must be accomplished in accordance with Rule 0720-10-.03 and requires an additional filing fee." Please note that supplemental information must be submitted timely for the application to be deemed complete prior to the beginning date of the review cycle which the applicant intends to enter, even if that time is less than the sixty (60) days allowed by the statute. The supplemental information must be submitted with the enclosed affidavit, which shall be executed and notarized; please attach the notarized affidavit to the supplemental information.

If all supplemental information is not received and the application officially deemed complete prior to the beginning of the next review cycle, then consideration of the application could be delayed into a later review cycle. The review cycle for each application shall begin on the first day of the month after the application has been deemed complete by the staff of the Health Services and Development Agency.

Any communication regarding projects under consideration by the Health Services and Development Agency shall be in accordance with T.C.A. § 68-11-1607(d):

- (1) No communications are permitted with the members of the agency once the Letter of Intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the Executive Director and a written summary of such communication shall be made part of the certificate of need file.
- (2) All communications between the contact person or legal counsel for the applicant and the Executive Director or agency staff after an application is deemed complete and placed in the review cycle are prohibited unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the Executive Director or agency staff are not prohibited.

Should you have any questions or require additional information, please do not hesitate to contact this office.

Sincerely,

Mark A. Farber
Deputy Director

Enc.

SUPPLEMENTAL

~~Additional~~
Information

July 26, 2018

10:48 A.M.

AFFIDAVIT

STATE OF TENNESSEE

COUNTY OF KNOX

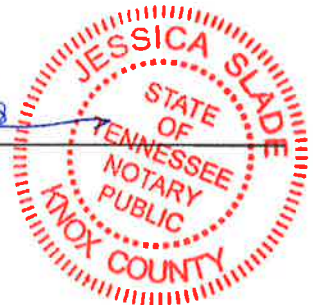
NAME OF FACILITY: **EYE SURGERY CENTER OF LENOIR CITY, LLC**

I, **Stephen H. Rudolph**, after first being duly sworn, state under oath that I am the applicant named in this Certificate of Need application or the lawful agent thereof, that I have reviewed all of the supplemental information submitted herewith, and that it is true, accurate, and complete.

Stephen H. Rudolph, CPA -
Signature/Title CONSULTANT

Sworn to and subscribed before me, a Notary Public, this the 26 day of July, 2018,
witness my hand at office in the County of Knox, State of Tennessee.

Jessica Slade
NOTARY PUBLIC



My commission expires 4/4, 2022.

HF-0043

Revised 7/02